

COPY

CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LOUISIANA

GLORIA SCOTT AND
DEANIA JACKSON

NO. 96-8461

VERSUS

DIVISION "K"

THE AMERICAN TOBACCO
COMPANY, INC., ET AL.

DOCKET NO. 4

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Videotaped deposition of EARL E.
KOHNHORST, [DELETED]
taken in the offices of Chaffe, McCall,
Phillips, Toler and Sarpy, L.L.P., Suite 2300,
Energy Centre, 1100 Poydras Street, New
Orleans, Louisiana 70163-2300, commencing at
9:45 o'clock a.m., on Friday, the 9th day of
February, 2001.

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10 as successor by merger to
11 The American Tobacco Company)

12 VIDEOTAPED BY:

13 C. O. (Om) Ingram
14 Evidence Management, L.L.C.

15 REPORTED BY:

16 CHERYL FOURNET HUFFMAN, RMR, CRR
17 Registered Merit Reporter
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25

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S T I P U L A T I O N

It is stipulated and agreed by and among counsel for the parties hereto that the deposition of the aforementioned witness is hereby being taken under the Louisiana Code of Civil Procedure, Article 1421, et seq., for all purposes, in accordance with law;

That the formalities of reading and signing are specifically not waived;

That the formalities of filing, sealing, and certification are specifically waived;

That all objections are reserved until trial or other use of the deposition, except those objections regarding the form of the question or the existence of a privilege.

* * * * *

CHERYL FOURNET HUFFMAN, Registered Merit Reporter, in and for the Parish of Orleans, State of Louisiana, officiated in administering the oath to the witness.

1 THE VIDEOGRAPHER:

2 Today is Friday, February 9th, 2000.
3 This is the videotaped deposition of Earl
4 Kohnhorst in the matter of Gloria Scott,
5 et al versus The American Tobacco Company,
6 et al. We're going on the record at 9:45
7 a.m.

8 My name is Om Ingram with Evidence
9 Management. Now counsel will please
10 notice their appearance off camera and the
11 court reporter will swear the witness.

12 MR. MICHAEL GERTLER:

13 My name is Mike Gertler. And I
14 represent the class representatives in
15 the class in this case.

16 MR. LOUIS GERTLER:

17 Louis Gertler, I also represent the
18 class and the class representatives.

19 MR. BOTTINELLI:

20 Terry Paul Bottinelli, plaintiffs.

21 MR. SHAFFER:

22 I'm Charlie Schaffer with the law
23 firm of King and Spalding and we represent
24 the defendant, Brown and Williamson
25 Company.

1 MR. DURHAM:

2 Bill Durham representing Brown and
3 Williamson Tobacco Corporation.

4 EARL E. KOHNHORST,

5 after having been first duly sworn by the
6 above-mentioned Registered Merit Reporter,
7 did testify as follows:

8 EXAMINATION BY MR. MICHAEL GERTLER:

9 Q. Mr. Kohnhorst, of course, I
10 understand you have given your deposition in
11 previous cases; correct?

12 A. Yes, I have.

13 Q. So you're familiar with the format
14 and the procedure; correct?

15 A. Generally, yes.

16 Q. All right. So the only thing I'd
17 like to remind you of is if you feel that I
18 have phrased the question in a way that you
19 don't understand, just ask me to rephrase it,
20 I'll be happy to do so.

21 A. Sure.

22 Q. Otherwise, I understand that the
23 answers that you give are honest and/or
24 responsive. And I appreciate that.

25 A. Okay.

1 Q. Mr. Kohnhorst, I understand that
2 you are a chemical engineer; is that correct?

3 A. That's what I was trained as, yes.

4 Q. And where did you receive your
5 training?

6 A. Speed Scientific School, part of
7 the University of Louisville.

8 Q. Now, Speed Scientific, is that an
9 engineering school?

10 A. Yes.

11 Q. And what year did you attend that
12 school or years?

13 A. I started in 1966, got my
14 bachelor's degree in '70, and my master's
15 degree in '71.

16 Q. How old were you when you received
17 your master's degree, sir?

18 A. Well, I was born in 1947, so about
19 -- what is that? -- 24?

20 Q. That sounds about right.

21 It was a one-year master's program?

22 A. A little bit over a year but
23 essentially five quarters.

24 Q. Did you learn anything during your
25 master's program about tobacco?

1 A. Nothing specifically, I don't
2 believe.

3 Q. Did you learn anything in your
4 undergraduate education about tobacco?

5 A. Not as a specific topic, no.

6 Q. All of your knowledge and
7 information regarding tobacco was acquired
8 and learned while you were employed by Brown
9 and Williamson?

10 A. I think that's correct.

11 Q. By the way, when you were doing
12 your master's program, did you do a work study
13 or was it all academic?

14 A. I did a thesis.

15 Q. You did a thesis?

16 A. (Witness nods head affirmatively.)

17 Q. What was the title of your thesis?

18 A. I don't recall exactly, but it was
19 catalytic reduction of nitric oxides.

20 Q. Published?

21 A. I don't know. I don't believe so.

22 Q. Have you ever published anything?

23 A. No, not that I'm aware of.

24 Q. Did you ever work during the
25 summers while you were in college or getting

1 your master's degree?

2 A. May I go back to the last question
3 just for a second? I don't know if, as an
4 example, patents are considered publishing.
5 But if they are, then I'm on several patents.

6 Q. Okay.

7 A. I apologize for the -- going
8 backwards.

9 Q. Now, tell me about those patents,
10 sir. How many and what are they patents for?

11 A. Just approximately four or five, I
12 don't recall exactly. One of them was on sand
13 separation, physical sand separation. One was
14 on ultrasonic measurement of slurry
15 consistencies. One -- I think maybe two were
16 on small, what was called small strip
17 bypassing, just a processing patent. That's
18 all I recall.

19 Q. Sir, you've just mentioned three.
20 Did any of those three have anything to do with
21 tobacco?

22 A. Well, they all do. And there were
23 two patents regarding small strip bypassing.
24 One was a product patent, one was a process, to
25 the best of my recollection.

1 Q. So they all had to do with the
2 tobacco manufacturing?

3 A. Yes. Absolutely.

4 Q. When you say the -- You called it
5 small strip?

6 A. Yeah.

7 Q. Does that have anything to do with
8 reconstituted tobacco?

9 A. Not directly, no.

10 Q. Did any of your patents have
11 anything to do with reconstituted tobacco?

12 A. The slurry measurement did.

13 Q. Did any of your patents have
14 anything to do with nicotine or by-products
15 of nicotine?

16 A. Not directly, no.

17 Q. Did any of your patents have
18 anything to do with the sensory effects of
19 nicotine?

20 A. Not directly, no.

21 Q. All right, sir. I asked you about
22 your summers. Did you work during your summers
23 while you were at the University of Louisville?

24 A. Yes.

25 Q. And did you work at either Goodyear

1 or Goodrich?

2 A. No.

3 Q. Where was your work?

4 A. I worked, both summers, I worked
5 co-op. So just addressing your question to
6 summers, I worked at a lumberyard and I worked
7 at Paramount Pickles. The lumberyard was
8 Gamble Brothers. And I worked at St. Regis, a
9 paper company.

10 Q. Was that while you were in college?

11 A. It was during one of my summer
12 breaks. Either high school or I think the only
13 other summer break was after the freshman year.

14 Q. Of college?

15 A. Correct.

16 Q. That's the only summer job -- That
17 was the last summer job that you held?

18 A. Yes. School was solid after that.

19 Q. Did any of those jobs pertain to
20 chemistry or engineering, chemical engineering?

21 A. No, I wouldn't say so.

22 Q. Is there a certification system in
23 chemical engineering?

24 A. There are several such as
25 engineering and training, and a professional

1 engineering degree -- professional engineering
2 certificate.

3 Q. Have you ever received a
4 certificate?

5 A. I got the engineering and training.
6 That's as far as I pursued it.

7 Q. So you have no certificate --

8 A. I have --

9 Q. -- per se, certification?

10 A. -- only, only my graduate degrees.

11 Q. And that's the degrees you earned
12 by simply completing your courses and your
13 college material and your master's; correct?

14 A. Correct.

15 Q. It's not a professional
16 certification?

17 A. That's correct.

18 Q. And are you licensed by any state
19 as a chemical engineer?

20 A. No.

21 Q. And so when you completed your
22 master's degree, what year was that, sir?

23 A. 1971.

24 Q. And did you go right to work for
25 Brown and Williamson as soon as you completed

1 your master's degree?

2 A. I did.

3 Q. And as I understand it from
4 reviewing your prior deposition, you worked
5 for Brown and Williamson continuously after
6 1971 and/or for their holding company?

7 A. I worked for a holding company that
8 was part of British-American Tobacco, not part
9 of Brown and Williamson; but it was associated,
10 part of the same total chain of companies.

11 Q. What is that company called, the
12 holding company? Is that BATUS?

13 A. Yes. I worked for BATUS.

14 Q. And BATUS is a holding company for
15 what companies in the United States?

16 A. Well, at that time it was --
17 they were a holding company for Brown and
18 Williamson, for Saks Fifth Avenue, Marshall
19 Field's, Gimbel's, Cole's, Breuner's, Ivey's,
20 Appleton Paper.

21 Q. So am I correct you continuously
22 worked after 1971 for Brown and Williamson or
23 BATUS?

24 A. Yes. With the exception, also, I
25 worked for British-American Tobacco Holdings.

1 Q. And that's also a related company
2 to Brown and Williamson?

3 A. Yes, they own Brown and Williamson.

4 Q. Are you still working --

5 A. No.

6 Q. -- for either Brown and Williamson
7 or a parent company?

8 A. No.

9 Q. When did you last work for Brown
10 and Williamson or a parent company?

11 A. My last official day was December
12 31st, 2000.

13 Q. Are you currently employed, sir?

14 A. No, I'm not.

15 Q. Are you retired?

16 A. Yes.

17 Q. And where do you reside?

18 A. In [DELETED]

19 Q. And when you worked for Brown and
20 Williamson Company after 1971, where did you --
21 where was the location of your employment?

22 A. Louisville, Kentucky.

23 Q. And when you worked for BATUS,
24 where was the location of your employment?

25 A. Also Louisville, Kentucky.

1 Q. And when you worked for BAT, the
2 parent company, where were you located, sir?

3 A. When I worked for British-American
4 Tobacco Holdings, the location was in Staines,
5 England and London, England. They moved during
6 my term.

7 Q. And you said you went to the
8 University of Louisville; correct?

9 A. Yes.

10 Q. I'd like to talk to you a little
11 bit about your time at Brown and Williamson.
12 When you were at Brown and Williamson, did
13 you continuously work there for 25 years,
14 approximately?

15 A. Yes. It's probably 24 and a
16 fraction, but that's approximately right.

17 Q. And when you first were employed
18 in 1971, what was your job title, sir?

19 A. I'm not certain. A process
20 engineer or something similar to that.

21 Q. And what were your, generally, your
22 duties as a process engineer?

23 A. It was creative activities for
24 improving process development and efficiencies
25 of tobacco processing.

1 Q. When you say "tobacco processing,"
2 what are you referring to? The chemical
3 components?

4 A. No. Everything.

5 Q. Everything that goes into a
6 cigarette?

7 A. All the processing steps, you know,
8 starting from the leaf plants to the primary
9 processing to the fabrication and packaging.

10 Q. Of the cigarettes?

11 A. Correct.

12 Q. Of all the cigarettes that were
13 manufactured by Brown and Williamson?

14 A. I guess the answer to that is
15 "Yes." I mean, it was about the processing.
16 All the cigarettes are processed in similar
17 ways.

18 Q. And when you say "processing," as I
19 understand your testimony, you're talking about
20 from the point where the leaf is actually
21 selected to the point where the cigarette
22 is finally manufactured into final form?

23 A. I mean, that's essentially right.
24 I mean, it really would start at the leaf
25 plants, which is just a step beyond what you

1 said. The leaf selection, I had nothing to
2 do with the leaf selection. But when it was
3 bought, I got involved with projects in terms
4 of the processing of the leaf, separation of
5 the lamina from stems, packaging, et cetera.

6 Q. Did you have anything to do with
7 selecting the leaf for its nicotine content?

8 A. I wasn't involved -- The time frame
9 is, of your question, is when I first joined
10 Brown and Williamson?

11 Q. That's where we are right now.

12 A. I was not involved with selection
13 of leaf.

14 Q. For nicotine content?

15 A. I said I wasn't involved with
16 selection of leaf.

17 Q. At all? Period?

18 A. Correct.

19 Q. I see. I apologize. I didn't
20 understand that response.

21 And how long did you remain in
22 the processing, as a process engineer that
23 you began in 1971?

24 A. Until about 1977.

25 Q. And were you transferred in 1977

1 to another department?

2 A. Yes.

3 Q. Was that at your request, sir?

4 A. No, it wasn't.

5 Q. Who transferred you? Or who was
6 responsible, as you understand the transfer?

7 A. I don't really know. You know, in
8 a big company, a lot of people get involved
9 with discussions about moving people and
10 developing them. But my boss perhaps was
11 intimately involved. He was certainly the one
12 that told me about the move.

13 Q. Who was that?

14 A. Dr. Sanford.

15 Q. S-A-N-D-F-O-R-D or S-A-N-F-O-R-D?

16 A. S-A-N-F-O-R-D, to the best of my
17 recollection.

18 Q. And was Dr. Sanford a Ph.D.?

19 A. Yes, he was.

20 Q. In what field?

21 A. I believe he had degrees in
22 chemical engineering and chemistry. I believe
23 his Ph.D. was in chemistry.

24 Q. And where were you transferred to?
25 What department?

1 A. A department called the development
2 center.

3 Q. What is the development center?

4 A. It's a pilot plant.

5 Q. And what does that mean, "pilot
6 plant"?

7 A. It was a small representation of
8 the factory. We made sample cigarettes and
9 did process development work at a larger scale.

10 Q. You were making sample cigarettes
11 of the same cigarettes that were being
12 manufactured in the regular manufacturing
13 plant?

14 A. I'm sorry. Could you repeat that
15 question?

16 Q. You were making the same cigarettes
17 but in a sample form that was manufactured in
18 the regular manufacturing?

19 A. Well, they weren't the -- I missed
20 the word. They weren't the same. I mean, they
21 were, you know, variations. They might be
22 recipes that the product developers wanted to
23 change part of the design of the product. So
24 not the same but similar.

25 Q. But the recipes were changed?

1 A. Yes.

2 Q. Did the change in recipe during the
3 time that you were in that pilot plant pertain
4 specifically to nicotine content?

5 A. No.

6 Q. Did it pertain to the form of
7 nicotine in the cigarette?

8 A. No.

9 Q. How long did you remain in the
10 process development work? At the pilot plant,
11 excuse me.

12 A. Approximately two years.

13 Q. Okay. That would be about 1979.
14 Then were you transferred?

15 A. Yes.

16 Q. Was it at your request?

17 A. No, sir.

18 Q. Who was your boss during that two-
19 year period?

20 A. I believe it also was Bob Sanford.

21 Q. Okay. And where were you
22 transferred to in 1979?

23 A. To -- I'm not certain of the title.
24 But the manufacturing plant in the engineering
25 department is the best that I can recall.

1 Essentially, the engineering department.

2 Q. Was that -- Where was that now? Is
3 that --

4 A. It was a different location also in
5 Louisville, Kentucky.

6 Q. And what, generally, were you doing
7 then during that time?

8 A. I was responsible for managing a
9 major plant design and construction project.

10 Q. Design and construction of the
11 plant or design and construction of the
12 cigarettes?

13 A. The plant, physical facilities.

14 Q. During that period of time, did you
15 have anything to do with the manufacture or
16 processing of the cigarettes specifically?

17 A. No.

18 Q. Okay. And how long did you remain
19 in that position, sir?

20 A. I don't recall exactly. About five
21 years.

22 Q. Well, in your prior deposition --

23 A. It probably took me -- Yeah. Go
24 ahead, please.

25 Q. In your prior deposition, you

1 indicated, sir, that you remained in that role
2 until about 1983.

3 A. Okay.

4 Q. Does that sound correct?

5 A. Yes.

6 Q. Does that refresh your memory?

7 A. I don't recall it exactly, but I'm
8 sure I had it clear whatever I said last time.
9 1983?

10 Q. Well, that's what you said last
11 time.

12 A. Yeah.

13 Q. So what's your answer this time?

14 A. I don't recall how long.

15 Q. But as you sit here today, you
16 approximated about four or five years?

17 A. Yes.

18 Q. Were you then transferred from that
19 department to another?

20 A. At someplace along that time frame,
21 I became Vice-President of Research,
22 Development and Engineering. I don't recall
23 now the year.

24 Q. Now, how did you obtain that
25 position as Vice-President?

1 A. They asked me to do the job.

2 Q. So you didn't apply for it?

3 Someone came and requested that you become
4 Vice-President?

5 A. Yes.

6 Q. I assume that was a promotion?

7 A. Yes.

8 Q. And who was it that requested that
9 you receive that promotion within the company?

10 A. I believe it was the Chairman, Dr.
11 I. W. Hughes.

12 Q. Dr. Hughes was located in
13 Louisville as well?

14 A. Yes.

15 Q. And who would have been under Dr.
16 Hughes directly in the chain of command within
17 that department?

18 A. I reported directly to Dr. Hughes
19 for a period of time, if that's what you're
20 asking me. There was no one between he and
21 I for a period of time.

22 Q. What period?

23 A. I don't -- I don't recall
24 precisely.

25 Q. Who else did you report to while

1 you were Vice-President of Research,
2 Development and Engineering other than Dr.
3 Hughes?

4 A. I think subsequent to that it was
5 John Alar.

6 Q. How do you spell the last name?

7 A. I don't know. I believe it's just
8 A-L-A-R, but I'm not certain.

9 Q. Anyone else?

10 A. Yes. I think subsequent to that
11 was Tommy Sandefur.

12 Q. Anyone else?

13 A. No. That was it.

14 Q. And how long did you remain
15 Vice-President of Research, Development and
16 Engineering?

17 A. I believe until I went to BATUS in
18 '87.

19 Q. Now, while you were Vice-President
20 of Research, Development and Engineering, how
21 many people were working within that
22 department?

23 A. Just approximately 200.

24 Q. And of those 200 employees were all
25 located in Louisville; correct?

1 A. Yes.

2 Q. Did you report to anyone in BAT or
3 in England during that time frame?

4 A. No.

5 Q. Did the parent company have its
6 own research, development and engineering
7 department, as you understood it?

8 A. The parent company being British-
9 American Tobacco?

10 Q. Or the sister company, yes.

11 A. Several of our sister companies had
12 research and development.

13 Q. And one of your sister companies
14 was located in England?

15 A. Yes.

16 Q. Which one was that?

17 A. I think that would have been a
18 company called BAT Co., B-A-T Company. It
19 was not the ultimate parent but that was the
20 company that had the R & D.

21 Q. All right. And did you, during
22 the time you were Vice-President, exchange
23 information with BAT Co. relative to R & D?

24 A. Yes.

25 Q. And you regularly exchanged that

1 information?

2 A. Yes. There were meetings once or
3 twice a year.

4 Q. There were research conferences
5 that you attended where BAT Co. was in
6 attendance?

7 A. Yes.

8 Q. And those occurred at least once or
9 twice a year?

10 A. Yeah, I think a formal one once a
11 year and perhaps some other meetings not quite
12 so formal. But perhaps making it once or twice
13 a year.

14 Q. So you exchanged scientific
15 information and knowledge with your sister
16 companies?

17 A. There was some exchange of what
18 we'd call technology, yes.

19 Q. And this exchange that went on, did
20 it include the transmittal of documents?

21 A. Not at these meetings, per se. The
22 meetings were generally presentations and
23 discussions, dialogue.

24 Q. Outside of the meetings, though,
25 was there a free flow of information by

1 exchange of documents?

2 A. There were a number of documents
3 that were exchanged, you know, particularly
4 final reports of work.

5 Q. And when you say "work," you mean
6 work pertaining to research and development?

7 A. Yes. Project activities and
8 research and development.

9 Q. Now, after you -- You said you
10 remained Vice-President in that department
11 till about 1987; correct?

12 A. Yes.

13 Q. And then what happened to your
14 career?

15 A. Well, that's when I went to BATUS.

16 Q. And you got transferred to BATUS;
17 correct?

18 A. Yes, I did.

19 Q. Who transferred you this time?

20 A. I'd say I was told about the
21 transfer by Ray Pritchard, who was the Chairman
22 of Brown and Williamson.

23 Q. What was the reason given for the
24 transfer?

25 A. It was a development move.

1 Q. I don't know what that means. Can
2 you explain it?

3 A. I didn't, either.

4 Q. You didn't, either. Did you ask?

5 A. Yes.

6 Q. Okay. And what was the explanation
7 given to you?

8 A. It was a job very, very unrelated
9 to my past career and training. It was about
10 managing a group of financial analysts and
11 responsibility for financial and business
12 planning.

13 Q. So it had nothing to do with your
14 education or training in chemical engineering?

15 A. "Nothing" is a pretty broad word.
16 It was definitely not core chemical engineering
17 activities.

18 Q. Whereas, when you were Vice-
19 President in Research and Development, that
20 pertained to your core training and education
21 in chemical engineering?

22 A. Certainly much closer. More
23 aspects were more familiar with my training.

24 Q. Well, were you transferred because
25 your department was changed in some way?

1 A. No. The department did change.
2 In fact, the R & D was relocated not too long
3 after I left to R & D (sic). But I don't think
4 that was the catalyst for my move.

5 Q. What did you say? The R & D was
6 relocated?

7 A. Yes. To Macon, Georgia.

8 Q. But did the focus of the department
9 change?

10 A. I apologize. I misspoke. The
11 engineering department actually was moved at
12 that period of time to Macon, Georgia.

13 Q. And R & D remained in Louisville?

14 A. At that period of time, yes.

15 Q. So while you were Vice-President,
16 the department was referred to as RD&E;
17 correct?

18 A. Yes.

19 Q. Research, development and
20 engineering?

21 A. That's right.

22 Q. And then the engineering section
23 was split off and sent to Macon?

24 A. That's right.

25 Q. And you were split off. And where

1 did you say you were sent to? In Louisville
2 somewhere; right?

3 A. To BATUS.

4 Q. BATUS.

5 And the focus of the work you were
6 doing changed, too; didn't it, sir?

7 A. Yes.

8 Q. And in what way did it change?

9 A. Well, it was not a job that was
10 exclusively about tobacco. It was not about
11 research and development. It was about
12 financial analysis and planning.

13 Q. Okay. Well, let's talk about what
14 changed when they split engineering off from
15 R & D. While you were with RD&E, you had a
16 particular interest in the sensory effects of
17 nicotine; didn't you?

18 A. No, I had a particular interest in
19 the sensory aspects of our product in total.

20 Q. In total. And one part of your
21 product is nicotine; am I right?

22 A. Oh, absolutely.

23 Q. So that would have been one of your
24 focuses while you were with RD&E?

25 A. I never had a focus on nicotine as

1 it relates to sensory. The sensory properties
2 are, you know, a complex mixture of nicotine,
3 tar, gas phase, physical, pressure drop,
4 tactile. So it's all those things, the sensory
5 properties. I don't recall ever having a view
6 of focusing on nicotine as it related to
7 sensory.

8 Q. You just remember that nicotine was
9 one part of the cigarette that you would expect
10 would have some sensory effects?

11 A. Yes.

12 Q. And you were doing that while you
13 were at R&D calculating, studying, determining
14 what those sensory effects might be; correct?

15 A. Well, I managed a department that
16 had a lot of -- a lot of charges. And sensory
17 improvement of the product was one of them.

18 Q. And that changed; didn't it? After
19 you left, your interest in that area and what
20 was going on at research and development no
21 longer pertained to the sensory effects of the
22 cigarette; did it?

23 MR. SHAFFER:

24 Object to the form.

25 EXAMINATION BY MR. MICHAEL GERTLER:

1 Q. Or do you know?

2 A. I don't understand the question.
3 You're asking me when I moved to BATUS, did my
4 role change? And I think I've described it
5 changed dramatically.

6 Q. I'm more interested in whether the
7 department function changed that was in
8 Louisville. Do you know after you left whether
9 they continued to study the sensory effects of
10 smoke and/or nicotine?

11 A. I don't believe when I left and the
12 engineering group went to Macon that it really
13 changed anything dramatically as it relates to
14 the portfolio of activities that R & D was
15 doing.

16 Q. And did you review any studies that
17 were conducted by the engineering department
18 after you left?

19 A. No. Meaning after I left going to
20 BATUS, I didn't look at any engineering studies
21 other than capital proposals that would come
22 from any of the operating companies, including
23 Brown and Williamson. And I would review those
24 as part of my planning and financial
25 responsibility at BATUS.

1 Q. So you would review the engineering
2 studies?

3 A. Well, I think I defined a very
4 small range of things that I would study,
5 which would be large capital proposals that
6 were outside of the lines of authority granted
7 Brown and Williamson. If they were above that,
8 I reviewed those capital plans.

9 Q. Did you continue to review
10 engineering studies that were performed at
11 Louisville in the engineering department when
12 you left for BATUS?

13 A. Well, the engineering department
14 moved to Macon.

15 Q. Macon.

16 A. And I think I've answered your
17 question, so I'm not --

18 Q. Well, just tell me "Yes" or "No,"
19 if you could.

20 A. I did not, in general, review the
21 engineering. I only reviewed capital
22 proposals.

23 Q. Okay. Now, would it be fair to
24 say that while you were in Louisville at the
25 research, development and engineering

1 department, you were a keen supporter of
2 chemosensory research?

3 A. It was -- It was one aspect of
4 product design that I thought was an important
5 element for people to invest some time in, yes.

6 Q. So it would be fair to characterize
7 your role as a keen supporter of that type
8 research?

9 A. I would have never characterized
10 myself as being a keen supporter. But I
11 certainly thought it was an area that was,
12 among many, that was relevant and interesting
13 to know for the product developers.

14 Q. Now, --

15 MR. SHAFFER:

16 Counsel, if you have a document
17 there --

18 MR. MICHAEL GERTLER:

19 I have plenty of documents.

20 MR. SHAFFER:

21 -- that relates to the phrase "keen
22 supporter" or transcript testimony, I
23 think it would be appropriate for you to
24 let him look at it with respect to that
25 specific question about that phrase.

1 MR. MICHAEL GERTLER:

2 I think he answered it. But if you
3 need to refresh your memory by review of
4 documents, I'll do my best to find
5 documents that address that point.

6 EXAMINATION BY MR. MICHAEL GERTLER:

7 Q. Have you ever seen a document, by
8 the way, that characterized you as a keen
9 supporter of chemosensory research?

10 A. I think I have, actually.

11 Q. You have?

12 A. (Witness nods head affirmatively.)
13 Uh-huh (indicating affirmatively).

14 Q. Who made that statement?

15 A. I'm not sure. I think it was one
16 of the scientists at BAT Co. I don't recall
17 who.

18 Q. Now, when you left the RD&E
19 department in Louisville, did any of your staff
20 get transferred as well?

21 A. The engineering department, as I've
22 said several times, got transferred to Macon,
23 if that's an accurate way that you're referring
24 to. But as far as a transfer, they stayed with
25 the same department but transferred to another

1 location.

2 Q. Did any of the staff get
3 transferred out of the engineering department
4 to another area?

5 A. I can't say, per se. It's very
6 possible that there were a limited number of
7 transfers where an engineer may have stayed
8 in Louisville and transferred into R & D. I
9 think that's possible, but I don't recall it
10 specifically.

11 Q. Do you know if any -- By the way --
12 Strike that. By the way, sir, what does
13 chemosensory research pertain to?

14 A. It's a study of the chemical and
15 sensory properties of smoke or aerosols.

16 Q. Does it include a study of the
17 chemical and sensory properties of nicotine
18 aerosols?

19 A. It certainly could. It would
20 include all the components of smoke that are
21 either -- that are in the smoke, that were
22 either aerosol or particulate or gas phase.

23 Q. Well, since that was an area
24 that you were specifically involved with,
25 chemosensory research, do you know?

1 A. But I was not.

2 Q. You weren't?

3 A. By "involved," I assume you're
4 talking about people at the bench doing the
5 work. I never was involved with chemosensory
6 research. I was the manager over the
7 department. There were literally tens or
8 thirties of projects going on. Chemosensory
9 would be one area where a few people might be
10 doing some work.

11 Q. You were making the decisions and
12 other people were doing the work; correct, sir?

13 A. Well, I certainly shared the
14 decision-making but I ultimately was
15 responsible for the allocation of resources.

16 Q. And one of the --

17 MR. SHAFFER:

18 Let him finish his answer, please,
19 Counsel.

20 MR. MICHAEL GERTLER:

21 Oh, I'm sorry.

22 MR. SHAFFER:

23 Had you finished your answer?

24 THE WITNESS:

25 Yes, I think so.

1 EXAMINATION BY MR. MICHAEL GERTLER:

2 Q. And one of the decisions that you
3 were making or contributing to make was that
4 chemosensory research should be studied at
5 Brown and Williamson?

6 A. Sure.

7 Q. And one of the areas you felt
8 should be studied included the chemosensory
9 effects of nicotine aerosol?

10 A. I don't think I ever made a
11 determination like that. But as I've already
12 said, once you say you should look at
13 chemosensory, which, of course, is a very
14 sensible area, that's what we -- that's what
15 our customers perceive the product is the
16 smoke, so studying the smoke makes sense. It's
17 like studying the taste if you're developing a
18 food.

19 Q. And the nicotine is passed from the
20 cigarette tobacco into the smoke; correct?

21 A. Nicotine comes from tobacco and
22 gets into smoke, of course.

23 Q. And, necessarily, that's one aspect
24 of the smoke that you felt should be studied
25 while you were Vice-President of Research and

1 Development and Engineering; correct?

2 A. I think I've said it very clearly
3 that we were looking at the chemosensory
4 properties of smoke. One of the constituents
5 of smoke coming from tobacco is nicotine.
6 There are many, many other constituents.
7 Nicotine was, to my knowledge, not singled
8 out nor was it anything that I set in terms
9 of a direction or a priority.

10 Q. Now, after you left or were
11 transferred away from that department, sir, did
12 you see anything in writing that would indicate
13 to you that that type of research was continued
14 at either Macon or Louisville?

15 A. I don't recall anything like that
16 when I was at BATUS.

17 Q. Who was hired, do you know, to fill
18 your position as Vice-President of Research,
19 Development and Engineering?

20 A. There was no replacement of that
21 combined research, development, engineering.

22 Q. Now, sir, did you have a written
23 contract with the company while you were
24 employed by Brown and Williamson?

25 A. Yes, at some point I did have a

1 contract.

2 Q. It was an employment contract?

3 A. I assume that's the way it could be
4 characterized. It was a -- I assume it was an
5 employment contract. I just don't know about
6 the technical -- It was a contract between
7 myself and Brown and Williamson. I assume
8 that's an employment contract.

9 Q. Was that your understanding, that
10 it was an employment contract?

11 MR. SHAFFER:

12 Don't guess. Don't speculate. If
13 you know, please answer it.

14 EXAMINATION BY MR. MICHAEL GERTLER:

15 Q. Don't guess about what your under-
16 standing was at the time. Just tell me what it
17 was.

18 A. It was a contract that defined
19 some terms of employment, some benefits on
20 separation, it defined conditions that were a
21 change of ownership, that sort of information.

22 Q. Did it have a confidentiality
23 agreement within it?

24 A. I don't recall. I know I -- To the
25 best of my recollection, I have signed at some

1 point a confidentiality agreement with Brown
2 and Williamson. But whether it was part of
3 that contract, I don't recall.

4 Q. Did that -- Do you remember the
5 terms of the confidentiality contract?

6 A. No.

7 Q. Did it have a provision in there
8 that prevented you from disclosing information
9 that you had learned while at Brown and
10 Williamson?

11 A. I don't -- I don't think there
12 could have been a provision that broadly, but
13 I really don't recall the contract provisions
14 as relates to confidentiality.

15 Q. Well, did it contain any provisions
16 that would have prevented you from making
17 disparaging remarks about the company?

18 A. Not that I recall.

19 Q. Are you being compensated for your
20 time today?

21 A. No, sir.

22 Q. You volunteered to come to New
23 Orleans and give this deposition?

24 A. Yes, I did.

25 Q. Who asked you to do that?

1 A. I think I heard from my ex-
2 secretary that I was to be requested to be
3 deposed.

4 Q. And you came here at your own
5 expense?

6 A. I believe the company will
7 reimburse my expenses.

8 Q. Did you have a contract with the
9 company that provided for any consultation
10 time?

11 A. No.

12 Q. When you left, what's the last
13 company you worked for? You said British-
14 American Tobacco Holdings?

15 A. No, it was Brown and Williamson
16 Tobacco.

17 Q. That's the last company you worked
18 for?

19 A. Yes.

20 Q. I might have missed that. When did
21 you go back to Brown and Williamson?

22 A. Approximately two years ago.

23 Q. And in what capacity did you go
24 back?

25 A. I went back as President of U. S.

1 Business.

2 Q. And does that U. S. Business
3 pertain to cigarettes?

4 A. Yes.

5 Q. Why did you leave the company, did
6 you say?

7 A. I retired.

8 Q. Did you reach retirement age?

9 A. Yes.

10 Q. Which is what at the company?

11 A. Early retirement is -- Well,
12 there's a lot of different stages but I'll say,
13 generally, early retirement is 50 years old.

14 Q. And you are currently receiving
15 your retirement benefits from the company?

16 A. They should be starting.

17 Q. You're looking forward to that?

18 A. Absolutely.

19 Q. You've never worked as a consultant
20 for the company?

21 A. No, I haven't.

22 Q. Or the parent company?

23 A. No, I've always been an employee.

24 Q. Did you ever serve on the Board of
25 Directors?

1 A. Yes.

2 Q. When was that, sir?

3 A. I believe I went on the Board of
4 Brown and Williamson when I became Executive
5 Vice-President, which would have been approxi-
6 mately, approximately 1990.

7 Q. And how long did you continue to
8 serve on the Board of Directors?

9 A. I've been on the Board with the
10 exception of my absence at British-American
11 Tobacco Holdings.

12 Q. So you've been on both the Board
13 of Brown and Williamson and British Tobacco
14 Holdings?

15 A. I was on the management Board of
16 British-American Tobacco Holdings.

17 Q. For what period of time?

18 A. For approximately -- Just less than
19 four years.

20 Q. And do you still serve on the Board
21 of Brown and Williamson?

22 A. No, I don't.

23 Q. When did you cease to serve on that
24 Board?

25 A. With my retirement on December

1 31st, 2000.

2 Q. Have you received any stock options
3 from the company?

4 A. Over the years, yes.

5 Q. How about now? Do you hold any?

6 A. Probably a very, very small amount.

7 Q. You have not -- That small amount
8 you received while you were Executive Vice-
9 President? Excuse me, Vice-President?

10 A. Actually, I think my answer is
11 incorrect. I don't believe I hold any options,
12 but I'm not certain. I do hold some employee
13 shares that I had paid for and the company
14 contributes after a point of time. To the best
15 of my recollection, that's all I have. It's a
16 small amount.

17 Q. Well, what other benefits do you
18 get from the company?

19 A. Do I get?

20 Q. Yes. I understand you're looking
21 forward to your retirement income. What else?

22 A. I get some financial counseling,
23 tax preparations primarily. Of course, I have
24 health care.

25 Q. Is that paid for life?

1 A. It's paid out of current funds, as
2 I understand it, and perhaps is partially
3 funded. I mean, that's essentially it as I can
4 think right now.

5 Q. The company partially funds your
6 health insurance for life?

7 A. The company is paying some sort of
8 premium for retirees out of their current
9 funds.

10 Q. Who gets that benefit? Is it just
11 management employees at Brown and Williamson or
12 all employees?

13 A. It's all employees that get health
14 care.

15 Q. For life?

16 A. Well, it's a benefit that has to be
17 decided by the Board of Directors of Brown and
18 Williamson. But, essentially, it has been an
19 ongoing benefit for the life of the company as
20 far as I'm aware. At least for many, many
21 years. There is no contract that I'm aware
22 of that guarantees that for future -- for the
23 future population.

24 Q. Sir, I'm a little bit hard of
25 hearing. Could you speak up just a bit?

1 Please.

2 A. Sure.

3 Q. Thank you.

4 Are you a smoker?

5 A. I've smoked for a lot of years. I
6 don't currently smoke.

7 Q. When did you stop smoking?

8 A. Oh, I've stopped a number of times
9 over the years.

10 Q. Well, why did you stop a number of
11 times?

12 A. I got involved with athletic
13 activities and just stopped smoking. I had
14 at some point had colds or irritation from
15 smoking, so I stopped.

16 Q. So when you stopped, were you
17 intending to stop permanently?

18 A. I don't think I made any big
19 judgment about it. At the time I stopped the
20 longest, I just was so active athletically that
21 I just didn't smoke.

22 Q. Now, you were an athlete then.
23 What years are you talking about?

24 A. Mid seventies through eighties.

25 Q. And what were you doing

1 athletically that caused you to want to quit
2 smoking?

3 A. I did a lot of running, a lot of
4 bicycling.

5 Q. And so you quit and then you
6 started again; correct? And then you quit and
7 then you started again; correct? And you did
8 that a number of times; correct?

9 A. I stopped probably two, two to
10 three times for a significant amount of time.

11 Q. And then each time you picked up
12 the cigarette and started up again; correct?

13 A. After those three times, I started
14 smoking again primarily because I was
15 responsible for product development and some
16 interesting things would come up that I wanted
17 to try, whether it was new tobaccos or new
18 design.

19 Q. So when you started smoking again,
20 you did so to make yourself more or less a
21 guinea pig for the company?

22 MR. SHAFFER:

23 Object to the form.

24 EXAMINATION BY MR. MICHAEL GERTLER:

25 Q. Well, to experiment for the benefit

1 of the company?

2 A. Well, I think there was a curiosity
3 on my part and really an understanding of what
4 people were telling me. It's very difficult to
5 convey subjective things. It's very difficult
6 for someone to say, "This tastes good" without
7 tasting it. So it's the same way with a
8 cigarette. It's very difficult to know if it's
9 -- what people perceive in terms of different
10 qualities of tobaccos or different process
11 steps. So, yeah, I experimented to try the
12 product.

13 Q. I see. So you don't ever consider
14 yourself to have been a, let's say, a regular
15 smoker?

16 A. No, I think I was a regular smoker.

17 Q. So outside of just experimenting
18 for the benefit of what you were doing in the
19 company, you were a smoker?

20 A. Yes, for a number of years.

21 Q. When did you start smoking?

22 A. I smoked a very --

23 Q. When did you start smoking?

24 A. I smoked a very small amount when I
25 was in college. And probably didn't start

1 smoking very much until the mid to late 1970s.

2 Q. Now, when you were in college,
3 you're saying you started. Was that your
4 freshman year?

5 A. I don't believe so, but it's
6 possible. I don't recall. It wasn't much
7 of an event. I didn't smoke very much.

8 Q. So as you sit here, you don't
9 remember the circumstances surrounding your
10 beginning to smoke?

11 A. I would just be with friends,
12 colleagues at school and maybe at a bar and
13 have a couple cigarettes.

14 Q. And so at that beginning, were you
15 smoking regular, full-flavored cigarettes?

16 A. I believe they were regular, full-
17 flavored cigarettes.

18 Q. What brand?

19 A. Tareyton.

20 Q. And did you continue to smoke
21 Tareyton throughout your smoking life?

22 A. No.

23 Q. What did you switch to?

24 A. Well, I just more or less pinched
25 Tareytons. I'm not sure I ever bought but

1 maybe one pack to give it to whoever I pinched
2 them from, so I didn't smoke regularly.

3 Q. What does "pinched" mean? You
4 borrowed and didn't give them back?

5 A. Sorry. This is falling off.

6 MR. MICHAEL GERTLER:

7 You want to take a brief recess?

8 MR. SHAFFER:

9 Yeah, we've been going almost an
10 hour. Why don't we take a short break.

11 THE VIDEOGRAPHER:

12 We're off the record at 10:38.

13 (Whereupon a brief recess was taken
14 at this time from 10:38 o'clock a.m. to
15 10:50 o'clock a.m.)

16 THE VIDEOGRAPHER:

17 We're back on the record at 10:50
18 a.m.

19 EXAMINATION BY MR. MICHAEL GERTLER:

20 Q. Okay. Mr. Kohnhorst, I was asking
21 you about your smoking history. Did you ever
22 testify, sir, that you began smoking at 16
23 years old?

24 A. I don't -- I don't believe so.

25 Q. That's not your recollection,

1 either?

2 A. I didn't -- I definitely didn't
3 start smoking when I was 16.

4 Q. Okay. In any event, you were
5 telling me you started smoking Tareyton and
6 then you made a switch.

7 A. Yes.

8 Q. And when was that and what did you
9 switch to?

10 A. Well, I didn't smoke Tareyton
11 regularly. I just pinched them from a friend
12 and every once in a while bought him a pack.

13 So when I went to work for Brown
14 and Williamson, after four or five years, I
15 probably started smoking some of the,
16 undoubtedly, B & W's products. I don't recall
17 which they were. It could have been Viceroy
18 and it could have been Kool because I've smoked
19 both products over the years.

20 Q. You smoked Kool filter, king-size
21 cigarettes?

22 A. At some point, I may have smoked a
23 few of those. I primarily smoked the lights
24 and milds.

25 Q. But do you remember what you

1 smoked?

2 A. I didn't smoke very, very
3 regularly. And I smoked different products
4 that Brown and Williamson made.

5 Q. So as you sit here today, can you
6 even remember which brands you smoked?

7 A. I definitely smoked Viceroy, I
8 definitely smoked Kools, the Kool milds, Kool
9 lights. But I, over the period of years, have
10 just about smoked and tried at least all of
11 our products. All of Brown and Williamson's
12 products, I should say.

13 Q. You mean you experimented with all
14 of them?

15 A. I would just try different brands
16 just to see how they tasted, how they were
17 different over a period of time than different
18 products.

19 Q. All right. But that wasn't part
20 of your job? That was what you were doing
21 personally, trying cigarettes to see if you
22 liked them well enough to continue smoking
23 them?

24 A. Well, I would characterize it as --
25 You know, it was not part of my job, per se.

1 But to know your -- the product that you're
2 involved with designing seems to be a sensible
3 thing. And that's part of what I was doing.

4 Q. Well, did you only smoke because
5 you were in your job with Brown and Williamson?

6 A. I think that would not be the only
7 reason. It certainly was one of the reasons.

8 Q. Well, what's the other reasons?

9 A. I enjoyed smoking for many years.

10 Q. What did you enjoy about it, sir?

11 A. I enjoyed the stimulus. Sitting in
12 a boring meeting or environment to have a break
13 with a cigarette was a pleasure. Having one in
14 the morning and one in the bar, I found
15 pleasurable.

16 Q. So you found that it gave you a
17 pleasurable feeling?

18 A. Yes.

19 Q. And was that one of the things you
20 were studying while you were at Brown and
21 Williamson, that feeling?

22 A. No.

23 Q. Did you ever study that?

24 A. No, I didn't.

25 Q. Where that feeling came from and

1 what caused that pleasurable feeling? Did you
2 ever study that, sir?

3 A. I think I said I didn't.

4 MR. SHAFFER:

5 Objection. Asked and answered.

6 EXAMINATION BY MR. MICHAEL GERTLER:

7 Q. And do you know, to your knowledge,
8 whether anyone at Brown and Williamson was
9 studying that aspect of smoking?

10 A. We tested cigarettes among
11 consumers. And, of course, we would ask them
12 how they liked the taste, flavor, what they
13 thought about the pressure drop, what they
14 thought about the levels of irritation or
15 strength or tobacco flavor. So, you know,
16 we inquired among consumers what product they
17 liked but primarily from a taste and sensory
18 perspective.

19 Q. Did you ever study what components
20 of the cigarette were leading to or causing
21 that pleasurable feeling?

22 MR. SHAFFER:

23 Is this -- The question is did he
24 study it or did B & W study it?

25 MR. MICHAEL GERTLER:

1 Uh-huh (indicating affirmatively).

2 MR. SHAFFER:

3 Object to the form.

4 EXAMINATION BY MR. MICHAEL GERTLER:

5 Q. The question that I previously
6 asked was did -- was he aware of any studies
7 at B & W being performed in that area?

8 A. I don't recall any beyond the
9 studies that I just mentioned in the previous
10 answer.

11 Q. Well, what studies did you mention
12 in the previous answer?

13 A. We manufactured cigarettes with
14 different designs. And we would offer them
15 to consumers to smoke the product. And we
16 would inquire about the relevant differences
17 versus perhaps the cigarette they smoked or a
18 competitive product, and how they rate it in
19 terms of the taste, the smoke quality, the
20 aftertaste, irritation. There was a lot of
21 attributes. So they basically rated the
22 cigarette in terms of likes and dislikes and
23 preferences.

24 Q. Why did you switch to the Kool
25 lights?

1 A. I don't recall specifically.

2 Q. Why did you switch to the Kool
3 milds?

4 A. I tried various brands of ours.
5 And those are the ones that were most agree-
6 able to me in terms of the taste.

7 Q. Did it have anything to do with
8 an understanding that they were healthier
9 cigarettes to smoke than the regular
10 cigarettes?

11 A. I don't --

12 MR. SHAFFER:

13 Object to the form. You may answer.

14 THE WITNESS:

15 I don't recall anything that went
16 into my decision other than selecting a
17 product that tasted the best to me
18 primarily was the criteria.

19 EXAMINATION BY MR. MICHAEL GERTLER:

20 Q. Now, based on your experience with
21 the tobacco company, did you have any under-
22 standing about whether these light or mild
23 cigarettes were healthier for you to smoke
24 than the regular brand?

25 MR. SHAFFER:

1 Object to form.

2 A. I'm not an expert here, but I did
3 have some understanding that there was some
4 information -- but conflicting information --
5 that showed somewhat less risk, somewhat less
6 statistical risk with the low tar products.

7 EXAMINATION BY MR. MICHAEL GERTLER:

8 Q. So when you say it was conflicting
9 information, you're saying that there was no
10 consensus that the light cigarettes or the mild
11 cigarettes were healthier than the regular
12 cigarettes?

13 MR. SHAFFER:

14 Object to form.

15 A. Like a lot of this epidemiological
16 information, there's studies that show one way
17 or the other. I think -- I think, but I'm not
18 certain -- that the epidemiological information
19 indicated some lower risk with lower tar
20 products. That's the best of my understanding.

21 EXAMINATION BY MR. MICHAEL GERTLER:

22 Q. And can you cite me to the author
23 of the epidemiology you're referring to?

24 A. No, I can't. Because I didn't
25 review any epidemiological information myself.

1 I think that was an understanding I got based
2 on discussion with some of our scientists.

3 Q. Did Brown and Williamson represent
4 to the public that the low tar cigarettes were
5 healthier than the regular cigarettes?

6 MR. SHAFFER:

7 Object to the form.

8 A. I'm not aware, certainly, of any of
9 my time with Brown and Williamson that we ever
10 made any health claims or represented reduced
11 risk with lights or low tar cigarettes.

12 EXAMINATION BY MR. MICHAEL GERTLER:

13 Q. Was it your understanding, though,
14 that -- Well, strike that. Let me move to
15 another area, sir, and ask you directly one
16 specific question. Is smoking addictive?

17 A. "Addictive," of course, is a word
18 that's had a lot of definitions over the years.
19 Under the current definition that has been
20 promulgated by the Surgeon General, and I think
21 the popular understanding of addiction, I'd say
22 most people would consider smoking, as a lot of
23 other lifestyle kind of things, as an
24 addiction.

25 Q. Well, the question is being

1 directed to you, sir, not everybody else. Do
2 you consider smoking addictive? "Yes" or "No"?

3 A. Well, I'd have to give you a
4 definition, of course, of how I define
5 "addiction."

6 Q. Well, after you answer it, you can
7 explain, if you want.

8 A. I'll do that.

9 Q. Good. Well, answer it first,
10 please.

11 A. I think if you consider --

12 Q. Can you answer it "Yes" or "No" and
13 then explain?

14 MR. SHAFFER:

15 Well, Counsel, --

16 MR. MICHAEL GERTLER:

17 I'm going to ask you to direct the
18 witness to do that.

19 MR. SHAFFER:

20 If he can answer it "Yes" or "No" --

21 MR. MICHAEL GERTLER:

22 Sure.

23 MR. SHAFFER:

24 -- he will answer it "Yes" or "No."

25 MR. MICHAEL GERTLER:

1

Sure.

2

MR. SHAFFER:

3

If he needs to explain it as a part of his answer, he's entitled to do that.

4

5

MR. MICHAEL GERTLER:

6

Well, I'm going to ask you to direct him to answer "Yes" or "No" and then explain. I think that's the proper way that the witness should respond. And I'm going to ask the Court for help if he does not respond in that way.

7

8

9

10

11

12

MR. SHAFFER:

13

Well, if he can answer it that way.

14

EXAMINATION BY MR. MICHAEL GERTLER:

15

Q. Well, here's the question. Now, I understand. Is smoking addictive, sir, in your opinion?

16

17

18

A. I don't think I can give a clear answer without explaining what my use or my feeling of what "addiction" means. I think it would be misleading, a "Yes" or a "No" answer.

19

20

21

22

Q. So you can't answer that "Yes" or "No"?

23

24

A. I think I just answered that question.

25

1 Q. All right, sir. Now, have you --
2 while you were at Brown and Williamson, what
3 is your understanding of Brown and Williamson's
4 view on whether smoking was addictive?

5 A. I think Brown and Williamson's view
6 has changed over the time during the time that
7 I was with Brown and Williamson. Initially, I
8 think Brown and Williamson's view was smoking
9 was not addictive based on the early definition
10 that was more a medical type definition and
11 included things like hallucinatory tolerance,
12 et cetera.

13 Under that strict medical type
14 definition, that was promulgated again by the
15 Surgeon General sometime in the early sixties,
16 to my recollection, the view was that it was
17 not addictive. Under the more recent
18 definition promulgated by the Surgeon General,
19 which is more behavioral, Brown and Williamson
20 believes that smoking fits that definition as
21 addictive -- as an addiction.

22 Q. When did Brown and Williamson
23 change their view from the position that
24 smoking was not addictive to the position
25 that smoking was addictive?

1 A. When they accepted a different
2 definition that they were responding to in
3 terms of the definition of "addiction."

4 Q. When did they accept a different
5 definition so that they could publicly state
6 that smoking was addictive?

7 A. I'm not precise on the date. But
8 within the last, say, two years, approximately.

9 Q. And was the position publicly
10 stated that smoking is addictive stated by the
11 CEO of Brown and Williamson?

12 A. I think that's right, yes.

13 Q. And did you also change your view,
14 sir, at that time from the view that smoking
15 was not addictive to smoking was addictive
16 based on the definition?

17 A. I don't think I've ever changed my
18 view. I think if you give me a definition, I
19 would have been very consistent with whether I
20 think it's addictive or not. It depends on the
21 definition of "addiction" that one is using.

22 Q. Well, I'm talking about the current
23 position of Brown and Williamson, as you
24 understand it, which was changed two years
25 ago --

1 A. Approximately.

2 Q. -- to state now publicly that
3 smoking is addictive, did you also conform
4 your view to agree that smoking is addictive?

5 A. I certainly agree with the
6 statements that the CEO has made under the
7 current definition. Smoking fits into that,
8 as many other things do in terms of addiction.

9 Q. Now, are you aware that the CEO has
10 testified in this case?

11 A. I believe I knew that. I'm not
12 certain.

13 Q. What's the name of the CEO we're
14 referring to?

15 A. Nicholas Brookes.

16 Q. And is that the CEO who changed his
17 public statement about smoking from being not
18 addictive to being addictive?

19 A. He certainly led the group to
20 review that came to a view that the public
21 statement needed to be changed based on the
22 input he got from scientists and others.

23 Q. Can you answer any question "Yes"
24 or "No" and then explain?

25 A. Yes.

1 Q. Good.

2 Have you been trained, sir, media
3 trained by the company?

4 A. Not really.

5 Q. What do you mean, "Not really"?

6 A. I mean, I have no extensive
7 training in media.

8 Q. Well, did you receive any training?

9 A. I don't believe so in media.

10 Q. Well, what did you -- You seem to
11 be hedging on your response. Did you receive
12 any training on how to respond to questions?

13 MR. SHAFFER:

14 Let me object to the form of that
15 question.

16 MR. MICHAEL GERTLER:

17 Yes, sir.

18 EXAMINATION BY MR. MICHAEL GERTLER:

19 Q. Did you receive any training, sir,
20 on how to respond to questions?

21 A. I've certainly sat down with
22 counsel in the past and discussed the --

23 MR. SHAFFER:

24 Well, Mr. Kohnhorst, any discussions
25 you've had with your counsel are

1 privileged. And so you may answer the
2 question to the extent it doesn't involve
3 communications you had with your counsel.

4 EXAMINATION BY MR. MICHAEL GERTLER:

5 Q. Did you sit down with your counsel
6 and discuss how to answer questions?

7 MR. SHAFFER:

8 Object to the form. And, also,
9 to the fact that that's covered by the
10 attorney-client privilege.

11 MR. MICHAEL GERTLER:

12 Well, I don't know if it is or
13 isn't. I don't know who he's referring
14 to. But we'll pursue it a little bit
15 further.

16 EXAMINATION BY MR. MICHAEL GERTLER:

17 Q. Who are you pursuing -- Who are you
18 referring to when you say that you sat down
19 with counsel?

20 A. With attorneys in the past before a
21 deposition, explaining that I need to tell the
22 truth, that I need to answer the questions.

23 Q. I understand that.

24 What attorneys are you referring
25 to? Give me the names.

1 A. The only one I had in mind was
2 Deirdre Fox.

3 Q. And Deirdre Fox, is that an
4 attorney who was employed by Brown and
5 Williamson?

6 A. Yes, she was engaged by Brown and
7 Williamson for the defense of some depositions.

8 Q. And have you spoken to anyone else
9 other than that attorney about how you should
10 respond to questions?

11 A. Yes, to counsel representing me
12 today.

13 Q. Who is that?

14 A. Bill and Charlie.

15 Q. Bill and Charlie represent you
16 personally today?

17 A. No, I'm not sure they represent me
18 personally. They represent the company is what
19 they stated for the record, Brown and
20 Williamson.

21 Q. So it's your understanding then
22 because they represent the company, that they
23 represent you; is that it?

24 A. I assume so. I don't really know.

25 Q. Well, did they tell you how to

1 answer questions today?

2 MR. SHAFFER:

3 Object to the form of the question.

4 That's privileged, any discussions.

5 EXAMINATION BY MR. MICHAEL GERTLER:

6 Q Has anybody told you not to respond
7 directly to questions "Yes" or "No" and then
8 explain?

9 MR. SHAFFER:

10 Object to the question. You're
11 getting into privileged discussions to
12 the extent you're asking about counsel.

13 MR. MICHAEL GERTLER:

14 Well, I don't think that's
15 privileged.

16 MR. SHAFFER:

17 If that question involves
18 non-counsel --

19 MR. MICHAEL GERTLER:

20 I don't think that's privileged.
21 But you can instruct him not to answer
22 it, if you want.

23 MR. SHAFFER:

24 Well, I'm telling him he can go
25 ahead and answer if it doesn't involve

1 counsel. If it involves counsel, I
2 instruct him not to answer.

3 MR. MICHAEL GERTLER:

4 You can not answer and we can get it
5 resolved. That's fine.

6 EXAMINATION BY MR. MICHAEL GERTLER:

7 Q. Sir, did anybody tell you not to
8 answer questions directly by saying "Yes" or
9 "No" and then explain?

10 A. No.

11 Q. Isn't that how you understand
12 you're supposed to respond to questions, if
13 you can answer "Yes" or "No"?

14 A. I understand that I need to answer
15 a question so it's clear and honest and not
16 misunderstood. And that's what I'm trying to
17 do.

18 Q. And do you understand as part of
19 that that the best way to communicate a direct,
20 honest answer would be to say "Yes" or "No" and
21 then explain?

22 MR. SHAFFER:

23 Object to the form.

24 A. I think that would be --

25 EXAMINATION BY MR. MICHAEL GERTLER:

1 Q. Where you can?

2 A. Is there a question for me?

3 Q. Yes, sir. Where you can do that?

4 A. And I'll try to give you a short
5 answer where I think a short answer is clear
6 and not misunderstood.

7 Q. So you can't answer "Yes" or "No"
8 to that, is that it?

9 A. I'm sorry. Is there a question?

10 Q. You can't even answer "Yes" or "No"
11 to the last question I posed to you?

12 MR. SHAFFER:

13 Would you restate the question?

14 MR. MICHAEL GERTLER:

15 Sure. Let her read it back.

16 (Whereupon the testimony on Page 68,
17 Line 18 through Page 69, Line 11 was read
18 back by the court reporter.)

19 THE WITNESS:

20 I'm sorry. I'm confused by all that
21 dialogue. I'll try to give you a clear
22 and concise answer wherever I can.

23 EXAMINATION BY MR. MICHAEL GERTLER:

24 Q. Now, when you have testified in
25 prior depositions, Mr. Kohnhorst, am I correct

1 that you have testified that you don't think
2 that nicotine is addictive?

3 A. Under the -- The answer is "Yes."
4 Under the Surgeon General's definition in the
5 early sixties, my view is it did not fit the
6 definition of "addiction." It was not only
7 my conclusion; it was the conclusion of the
8 Surgeon General.

9 Q. And did you so testify to that as
10 recently as 1999?

11 MR. SHAFFER:

12 Counsel, if you have a transcript
13 that has the question and answer, I think
14 it would be appropriate for you to show
15 the witness.

16 MR. MICHAEL GERTLER:

17 I assume that's an objection to the
18 form of the question.

19 MR. SHAFFER:

20 It is.

21 MR. MICHAEL GERTLER:

22 Okay. So I'll proceed.

23 EXAMINATION BY MR. MICHAEL GERTLER:

24 Q. Do you have a recollection, sir, of
25 having testified as recently as 1999 to that

1 effect?

2 A. I don't recall it specifically, but
3 I think that's consistent with what I would say
4 today.

5 Q. So when did you change, what year
6 did you change to state publicly that smoking
7 is addictive?

8 A. I haven't stated anything publicly,
9 to my knowledge. Obviously, Brown and
10 Williamson's view has been put on the website.
11 I'm in no disagreement, in fact, supportive of
12 what's said on the website regarding addiction.

13 Q. So you state publicly today to this
14 jury that smoking is addictive; is that
15 correct, sir?

16 A. Yes, under the definition that's
17 commonly understood, people believe smoking is
18 addictive.

19 Q. Well, you are a people; aren't you,
20 sir? That means you; right? You believe that?

21 A. Under the current definition,
22 absolutely. I'm a people, and I do believe it
23 fits that definition.

24 Q. And that's the definition you're
25 referring to that the Surgeon General has

1 published; correct?

2 A. The latest one, yes, sir.

3 Q. The Surgeon General of the United
4 States; correct?

5 A. Yes.

6 Q. And you have dealt with addiction
7 and the question of addiction previously in
8 your work at Brown and Williamson; didn't you,
9 sir?

10 A. I'm not aware of any particular
11 work that I've been involved with dealing with
12 addiction as a topic.

13 Q. Well, you reviewed documents,
14 didn't you, while you were at Brown and
15 Williamson, of Brown and Williamson employees
16 who were studying the question of whether
17 smoking is addictive?

18 A. I don't recall any documents at
19 Brown and Williamson regarding addiction.
20 There may be some. I just don't recall.

21 Q. Didn't you make decisions while you
22 were Vice-President about whether the company
23 should use documents that refer to smoking as
24 addictive?

25 A. I don't have a recollection at this

1 stage of what you're referring to.

2 Q. Wasn't that part of your decision-
3 making, sir, to decide whether the company
4 should rely on documents that refer to smoking
5 as addictive?

6 A. Again, I don't -- I don't recall
7 any documents that I was reviewing regarding
8 addiction at the moment.

9 Q. Did you -- Go ahead. Did you
10 finish?

11 A. Yes, I did.

12 Q. Did you recall having discussions
13 with others at either Brown and Williamson or
14 BAT as to whether Brown and Williamson should
15 rely on use documents that refer to smoking as
16 addictive?

17 A. I'm just not sure what you're
18 referring to. You said rely on. I don't --
19 I don't -- It's not ringing any bells with me,
20 I'm sorry.

21 Q. Well, let's see if this rings a
22 bell with you.

23 Do you remember any discussions
24 while you were Vice-President about studies
25 that have been done where there was a reference

1 to smoking being addictive?

2 A. No, I don't recall right here.

3 Q. Do you recall a study that was
4 entitled "THE FUNCTIONAL SIGNIFICANCE OF
5 SMOKING IN EVERYDAY LIFE"?

6 A. Yes, I have some vague recollection
7 of that, yes.

8 Q. Does your vague recollection allow
9 you to recall that you received a copy of that
10 study while you were at Brown and Williamson?

11 A. I don't remember precisely getting
12 the document, but I know I have seen it.

13 Q. You've been asked about it before;
14 haven't you, sir?

15 A. I think so.

16 Q. And you've testified about it
17 before, haven't you?

18 A. I think so, yes.

19 Q. As recently as -- what? -- 1999?

20 A. I don't -- I don't know.

21 Q. And you don't remember it as you
22 sit here today?

23 A. No.

24 Q. Why did you look at the study
25 referred to as "A FUNCTION" -- "THE FUNCTIONAL

1 SIGNIFICANCE OF SMOKING IN EVERYDAY LIFE" while
2 you were Vice-President or while you were at
3 Brown and Williamson?

4 A. I don't know. Because I can't
5 really recall what -- There's a couple
6 documents that I think I've gotten confused
7 about what they were historically. If this is
8 the one about the smoking, the benefits of
9 smoking, then perhaps I know this document. If
10 it's not, I'm not certain which document it is.

11 Q. Well, do you recall if that
12 document is the one that refers to an addiction
13 model?

14 MR. SHAFFER:

15 Counsel, would it be appropriate to
16 show the witness? I think it would.

17 MR. MICHAEL GERTLER:

18 I'm trying to refresh -- I'm doing
19 my best to refresh his memory.

20 EXAMINATION BY MR. MICHAEL GERTLER:

21 Q. But if he just has no memory at
22 all, then I feel like I have to show you a
23 document to try to refresh your memory. But
24 in this way, I'm trying to help you remember.

25 A. Yeah.

1 Q. Do you remember that the document
2 we're talking about is the one that has an
3 addiction model in it?

4 A. No, I'm not sure I've read this
5 document. But I know I've referred to it in
6 the past. And without seeing it, I just don't
7 -- I'm not sure what document this is.

8 Q. I'm going to show you a document
9 that is entitled "THE FUNCTIONAL SIGNIFICANCE
10 OF SMOKING IN EVERYDAY LIFE." And it is
11 identified as "Scott Exhibit Number 2144."

12 (Whereupon a discussion was held off
13 the record.)

14 MR. MICHAEL GERTLER:

15 And we'll see if we can get a copy
16 out for you, sir. "2144." If not, I'll
17 give you the copy that I'm referring to
18 here, see if you can -- Let the record
19 reflect that I'm handing the witness that
20 exhibit now.

21 MR. SHAFFER:

22 Do you happen to have another copy?

23 MR. MICHAEL GERTLER:

24 I don't have another copy, I'm
25 sorry. And if we need to take some time

1 or take a break for you to look at it
2 first, I'll be happy to do that.

3 MR. SHAFFER:

4 Okay. Why don't you look at it and
5 then I'll take a look at it.

6 THE WITNESS:

7 (Reviews document.)

8 MR. MICHAEL GERTLER:

9 I think if the witness is going to
10 page through that document, that we ought
11 to take a brief recess, let him do that,
12 and come back on the record.

13 MR. SHAFFER:

14 That's fine.

15 THE VIDEOGRAPHER:

16 Off the record at 11:18.

17 (Whereupon a brief recess was taken
18 at this time from 11:18 o'clock a.m. to
19 11:24 o'clock a.m.)

20 THE VIDEOGRAPHER:

21 We're on the record at 11:24.

22 EXAMINATION BY MR. MICHAEL GERTLER:

23 Q. All right, sir. Have you had the
24 opportunity to review the document I referred
25 to previously as "THE FUNCTIONAL SIGNIFICANCE

1 OF SMOKING IN EVERYDAY LIFE"?

2 A. Yes, I've very briefly looked at
3 the first of it.

4 Q. Have you looked at it sufficiently
5 to allow you to testify as to whether you had
6 seen that document before?

7 A. Yes.

8 Q. And did you see that document while
9 you were an employee of Brown and Williamson?

10 A. Yes.

11 Q. And the date of the document is
12 April the 24th, 1984; is that correct?

13 A. Yes, it is.

14 Q. Is that approximately the time
15 frame within which you saw this document at
16 Brown and Williamson?

17 A. I would think so.

18 Q. And does this document contain a
19 reference to addiction models?

20 A. There is a reference to addiction
21 models and several other models, yes.

22 Q. And I refer you specifically to
23 Page 6 of this document under the heading of
24 "Models of explanation of smoking." Do you
25 see that?

1 A. I do.

2 Q. And do you see the statement at
3 the heading of this section? It says, and I
4 read for the record -- you correct me if I'm
5 wrong -- "The simplest and most prevalent
6 explanation of smoking is the assertion that
7 it is an addiction." Do you see that?

8 A. I see that.

9 Q. And then it goes on on that
10 particular page, sir, to discuss the question
11 of addiction. Do you see that?

12 A. I apologize. Could you say that
13 again? I was looking --

14 Q. It goes on in that section to
15 discuss the whole issue of whether smoking is
16 addictive. Do you see that?

17 A. There's a little bit more about it.
18 There's not -- There doesn't seem to be very
19 much of a discussion. It goes from there to
20 the pleasures and rewards. There's a very
21 short paragraph that says something about
22 "addiction" and "dependence" are used
23 independently, so -- If that's what you're
24 referring to, I see that.

25 Q. I'm referring specifically to the

1 quote at the top of the page where it says, and
2 I quote, "Cigarette smoking is probably the
3 most addictive and dependence-producing, object-
4 specific, self-administered gratification known
5 to man." It has a reference to Russell. Do
6 you see that?

7 A. Yes.

8 Q. You read that when you were at
9 Brown and Williamson?

10 A. I assume I did. I didn't read this
11 report, certainly, from cover to cover.

12 Q. And then it goes on on that page
13 then, sir, it says that "A good deal of
14 confusion exists over the definitions." And
15 it talks about "addiction," "dependence,"
16 "compulsion" and "habit." Do you see that,
17 sir?

18 A. Yes.

19 Q. And then on the next page, on Page
20 7, there's a conclusion, it says, the last
21 paragraph, "It is generally agreed that the
22 definitive features of addiction/dependence
23 are pleasure or reward, withdrawal effects and
24 development of tolerance." Do you see that?

25 A. Yes, I see that.

1 Q. Was that your understanding in 1984
2 when you were at Brown and Williamson?

3 A. No.

4 Q. Were you concerned at all about
5 the reference to cigarette smoking as being
6 addictive in 1984?

7 A. I don't believe I had a high level
8 of concern or understanding about the issue of
9 addiction in 1984.

10 Q. Well, does the definition that's
11 contained on Page 7, the paragraph I just read
12 to you, conform with the Surgeon General's
13 definition?

14 A. I don't believe so. Not the early
15 one, I don't believe so.

16 Q. Well, what is the difference
17 between the earlier definition and the later
18 definition that you claim you understand about
19 the Surgeon General?

20 A. Well, I'd have to refer to it to
21 get it precisely. But the first could be
22 characterized more as a medical. And it
23 included words like it needs to be -- the
24 substance needs to be hallucinatory, tolerance
25 is mentioned here and withdrawal is mentioned

1 here. I don't recall pleasure. So I think
2 this primarily misses hallucinatory as part
3 of the definition of the Surgeon General.

4 Q. So it was your understanding then
5 in 1984 that the Surgeon General defined
6 "addiction" as including hallucinatory effects,
7 withdrawal symptoms, and pleasure or reward; is
8 that correct, sir?

9 A. Almost but not quite. I don't
10 recall it saying anything about pleasure and
11 reward. And it does include tolerance.

12 Q. And it does include tolerance?

13 A. (Witness nods head affirmatively.)
14 That's to the best of my recollection.

15 Q. So you don't recall being concerned
16 at all about the reference in this "FUNCTIONAL
17 SIGNIFICANCE OF SMOKING IN EVERYDAY LIFE" to
18 the fact that there was an addiction model for
19 smoking contained in that report?

20 MR. SHAFFER:

21 Object to the form.

22 A. I recall -- No, I don't recall a
23 specific concern about it. I do recall it
24 being discussed. The request that I can --
25 that I had when I brought this back, as best

1 I remember, was the use of this as a public
2 relations piece as it relates to the functions
3 of benefits of smoking. So that was the
4 perspective I best recall.

5 EXAMINATION BY MR. MICHAEL GERTLER:

6 Q. Where did you bring it back from?

7 A. I brought it back from an R & D
8 conference, the best I can recall. And I don't
9 know where it was.

10 Q. And that R & D conference was a
11 conference of BAT sister companies, British-
12 American Tobacco?

13 A. It was a group of associated
14 companies, all part of the British-American
15 industry group ultimately.

16 Q. And you were representing Brown and
17 Williamson at that conference?

18 A. I was not the only representative
19 because I see on the front page, the previous
20 Vice-President of R & D was there. So I was,
21 obviously, relatively new in the position. And
22 I was also representing Brown and Williamson.

23 Q. And when you returned with this
24 report, who did you give it to, sir?

25 A. The best I recall, I asked for an

1 opinion from Mr. Pepples, Ernie Pepples.

2 Q. And who is Mr. Ernie Pepples?

3 A. I don't recall exactly his title.
4 But he at one stage was the counsel for Brown
5 and Williamson. He was also responsible for
6 government affairs and perhaps political
7 affairs.

8 Q. And in what capacity did you give
9 him this report? As attorney for Brown and
10 Williamson or in some other capacity?

11 A. I think I was asking his opinion.

12 Q. Were you asking for his legal
13 opinion?

14 A. I think partially, yes.

15 Q. Why were you asking for his legal
16 opinion about a scientific report, sir?

17 A. Well, I wouldn't -- First of all,
18 this is not at all a scientific report, I
19 wouldn't think. Perhaps it could be
20 characterized that way. Because it has a lot
21 of behavioral things and perhaps that is a
22 scientific report.

23 Q. Perhaps it is? Or do you consider
24 studies of behavioral, that is, to be science
25 as well?

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1 A. Well, they probably are.
2 Q. Yeah. Okay.
3 A. So --
4 Q. So what? So you --
5 A. I was asking the opinion, legal
6 opinion, I believe, regarding the appropriate-
7 ness of using something from a tobacco company
8 that states an array of benefits from smoking.
9 Q. Well, now, sir, this report, the
10 authors of this report, were they employees of
11 British-American Tobacco?
12 A. I believe so.
13 Q. And so they were giving a report of
14 studies that they performed as employees of
15 British-American Tobacco; correct?
16 A. I assume that's right, yes.
17 Q. Paid for by British-American
18 Tobacco?
19 A. Yes.
20 Q. And you came back to the United
21 States, and you asked the attorney for Brown
22 and Williamson whether it was appropriate for
23 the British-American Tobacco scientists to make
24 these statements in their report?
25 MR. SHAFFER:

1 I object to the question. It's
2 privileged. You're dealing with a
3 communication between Mr. Kohnhorst and
4 counsel.

5 MR. MICHAEL GERTLER:

6 Well, that communication is subject
7 to a determination on privilege by the
8 judge in this case. And subject to that,
9 we do intend to inquire into this area to
10 determine whether there is a privilege.
11 So any time you instruct him, you do so.

12 MR. SHAFFER:

13 Well, that question included your
14 interpretation, your understanding of what
15 the communication may have been from this
16 witness to his counsel. And that's a part
17 of the communicative process with counsel
18 and that is privileged.

19 EXAMINATION BY MR. MICHAEL GERTLER:

20 Q. Well, the question, sir, is if this
21 report was given to you by British-American
22 Tobacco at a research and development
23 conference involving sister companies of
24 British-American Tobacco, why did you have
25 concern about the legal aspects of this report?

1 MR. SHAFFER:

2 I object to form.

3 A. I was inquiring regarding the
4 potential extensions of warranty or some other
5 claim that may -- that I may not understand as
6 it relates to the U. S. market of -- You know,
7 I don't even know if there's a valid body of
8 science that will support these claims. So I
9 think it was very reasonable on my part to not
10 assert any kind of benefits of smoking.

11 I didn't think it was a good idea
12 to start with, that a tobacco company should do
13 that. And even if you chose to, you'd have to
14 be certain that you had a body of science that
15 would support these benefits. And I was
16 inquiring about the -- about that area in
17 general from Mr. Pepples.

18 EXAMINATION BY MR. MICHAEL GERTLER:

19 Q. Why ask a lawyer about that and not
20 a scientist?

21 A. I think you have to, you know,
22 blend --

23 MR. SHAFFER:

24 Well, let me just state to the
25 extent you're, in answering that, you're

1 dealing with your communication with Mr.
2 Pepples, I instruct you not to answer.
3 If you can answer it beyond that communi-
4 cation with the lawyer, please go ahead
5 and answer it.

6 MR. MICHAEL GERTLER:

7 Let me just make a statement that we
8 will be back in the event that we get a
9 determination from the Judge that this is
10 not privileged to take this witness again
11 here in New Orleans.

12 We believe the appropriate way to
13 proceed would be for him to respond,
14 maintain that under seal until the Judge
15 rules, and then at that point in time
16 determine whether it should be part of
17 the transcript.

18 Can we agree to that?

19 MR. SHAFFER:

20 Let me just take a short break and
21 consult with Mr. Durham for just a moment
22 on that.

23 (Whereupon a discussion was held off
24 the record.)

25 MR. MICHAEL GERTLER:

1 You want to go back on the record?

2 MR. DURHAM:

3 I'm not sure we ever actually went
4 off the record.

5 MR. MICHAEL GERTLER:

6 All right.

7 MR. DURHAM:

8 But, yes, we have had an agreement
9 of that nature with respect to privileged
10 documents that have made their way into
11 the public domain; and, therefore, we've
12 permitted you to and your co-counsel to
13 inquire about those documents of certain
14 witnesses subject to stipulations we've
15 agreed to.

16 But with respect to communications
17 that do not fit that narrow description,
18 we have not reached that agreement in
19 the past and don't believe it would be
20 appropriate in this case, either.

21 Now, that doesn't mean that you
22 can't ask questions and frame them in
23 certain ways to get information you're
24 looking for without intruding into the
25 attorney-client privilege. But we just

1 don't feel it's appropriate at this time
2 to permit disclosure of privileged
3 communications and seal the record.

4 MR. MICHAEL GERTLER:

5 Do you think it's privileged, Mr.
6 Durham, to ask this witness why he decided
7 to go to a lawyer instead of a scientist
8 about the concerns he had with reference
9 to that report?

10 MR. DURHAM:

11 I think it would be appropriate to
12 ask him what concerns he had about the
13 report.

14 MR. MICHAEL GERTLER:

15 Well, no, I'm asking him the
16 specific question of why he chose to go
17 to a lawyer instead of a scientist. And I
18 don't think that's in any way privileged.
19 But you instruct him as you feel
20 appropriate on that question. And I'd
21 like an answer to it.

22 MR. SHAFFER:

23 Well, I think to the extent that
24 you're talking about his individual
25 concerns, you're certainly entitled to ask

1 him that question. If you ask him "Why
2 did you go to a lawyer?" and if in
3 answering that question, he deals with his
4 communications to the lawyer, then I think
5 that's privileged.

6 Now, if he can answer the question
7 "Why did you go to the lawyer?" without
8 dealing with his communications with the
9 lawyer, fine.

10 MR. MICHAEL GERTLER:

11 All right.

12 MR. SHAFFER:

13 You may have an answer.

14 MR. MICHAEL GERTLER:

15 I'm going to ask for sanctions on
16 this particular area if you instruct him
17 not to answer.

18 EXAMINATION BY MR. MICHAEL GERTLER:

19 Q. So I'm going to ask you again, sir,
20 why did you choose to go to a lawyer instead of
21 a scientist to ask questions about this
22 particular scientific report?

23 MR. SHAFFER:

24 Now, Mr. Kohnhorst, please answer
25 the question unless there were communi-

1 cations with lawyers.

2 MR. MICHAEL GERTLER:

3 Don't make any more statements, sir.
4 We've already gone through that.

5 MR. SHAFFER:

6 Go ahead and answer the question.

7 A. I was -- I must have had several
8 reasons to go to various people, so -- I don't
9 recall at this time precisely the reason I had
10 in my mind why I went to Mr. Pepples. But,
11 first of all, he is an attorney. To make a
12 claim about our product, I assume there were
13 some guidelines that we would have to have in
14 place, that there would be -- There's so much
15 controversy about tobacco, to make a statement
16 that would be viewed as a positive, to me, felt
17 like something that would be challenged. And I
18 wanted to understand what the potential legal
19 ramifications of that were as well as what the
20 political or P.R. ramifications would be. And
21 that was the reason to go to the lawyer.

22 EXAMINATION BY MR. MICHAEL GERTLER:

23 Q. To your understanding, did Mr.
24 Pepples have any scientific background?

25 A. By formal training, I don't believe

1 so. But he, obviously, was very well-read in
2 some science areas.

3 Q. You're talking about he was reading
4 a lot of science that was generated about
5 cigarettes; is that what you're saying?

6 A. I would think most of the science
7 would be relative to tobacco, yes.

8 Q. And did this lawyer, did you go to
9 him for his scientific expertise?

10 A. No, I don't think I did. I didn't
11 say that.

12 Q. Did you go to him for his legal
13 expertise?

14 A. That's certainly part of that, yes.

15 Q. Anything else?

16 A. Yes. His view of the public
17 affairs aspect of the question that was being
18 asked me as well.

19 Q. You're talking about the public
20 affairs question regarding smoking and
21 addiction?

22 A. No, I'm not.

23 Q. Did you get any memorandums from
24 this lawyer, Pepples, regarding "THE FUNCTIONAL
25 SIGNIFICANCE OF SMOKING IN EVERYDAY LIFE"

1 report?

2 A. I don't recall it at the time.
3 I've seen it since then, so I know there was a
4 communication.

5 Q. You don't recall it at the time?

6 A. That's correct. I just recall
7 talking to him about it.

8 Q. You don't dispute the fact that you
9 got a memorandum from Mr. Pepples; do you?

10 A. No, I didn't say that I did.

11 Q. And you don't dispute the fact that
12 you got it in approximately 1984?

13 A. No.

14 * * * * *

15
16 (Page 94, Line 14 through Page 138,
17 Line 8 was placed under seal.)
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EXAMINATION BY MR. MICHAEL GERTLER:

Q. Well, let's talk about Brown and Williamson and what your understanding was at Brown and Williamson, sir.

A. Uh-huh (indicating affirmatively).

Q. Was it your understanding that Brown and Williamson scientists had described a cigarette as simply a nicotine delivery system?

A. I've heard that expressed by some people. But it's certainly not widely viewed as an accurate statement among the scientists.

Q. No, I'm talking about the scientists who work for Brown and Williamson.

A. That's what I'm talking about.

Q. They said you could characterize the cigarette as simply a nicotine delivery system; didn't they, sir?

1 MR. SHAFFER:

2 Object to form.

3 A. I don't believe the scientists --
4 There may have been a reference from a
5 scientist.

6 EXAMINATION BY MR. MICHAEL GERTLER:

7 Q. You've seen the reference; haven't
8 you?

9 A. Yes, I have at some point.

10 Q. How many times have you seen a
11 reference by a Brown and Williamson scientist
12 that the cigarette is nothing but a nicotine
13 delivery system?

14 A. I don't know. Not very many, I
15 don't believe.

16 Q. Did you, in seeing those reports by
17 Brown and Williamson scientists, discuss that
18 issue with them?

19 A. I don't recall any discussions on
20 that with any of the scientists.

21 Q. Have you ever heard the following
22 statement, sir, from a scientist's report, and
23 I quote, "So all in all, it is a relatively
24 cheap and efficient delivery system, legal and
25 easily usable"? Have you ever heard that

1 before?

2 A. From Brown and Williamson? No.

3 Q. Okay. Who is C. C. Greig,
4 G-R-E-I-G?

5 A. He's somebody at BAT Co., I
6 believe.

7 Q. BAT Co. being the sister company of
8 Brown and Williamson?

9 A. Actually, I should say he's from
10 Southampton R & D. The associations change
11 over the years, so I don't -- But, yes, one of
12 the associated or related companies.

13 Q. And in the R & D area, you've
14 testified that you exchanged information and
15 reports, correct?

16 A. Yes, I did say that.

17 Q. Did you ever see the report by
18 Colin Greig entitled "PAPER 7, PROJECT
19 PROPOSALS: LOW CARBON MONOXIDE PRODUCT, HIGH
20 EXPANDED TOBACCO CIGARETTE"?

21 A. I've seen this because it's been
22 put in front of me in a deposition, to the best
23 of my memory. I don't think I've ever seen it
24 prior to that.

25 Q. Did you recognize the name, Colin

1 Greig?

2 A. Did I recognize it?

3 Q. Yes. Do you recognize that name?

4 A. Do I now?

5 Q. Yes.

6 A. Yes.

7 Q. And do you recognize him as being
8 an employee of British-American Tobacco
9 Company?

10 A. Yes, I believe he still is.

11 Q. And he was a scientist employed by
12 British-American Tobacco Company?

13 A. I don't know if he's a scientist.
14 He's certainly got a chemist degree or some-
15 thing. I think he was in product development.
16 I don't know exactly his technical background.

17 Q. And the report, "The Structured
18 Creativity Group, Thoughts by C. C. Greig,
19 R & D Southampton, Marketing Scenario," you've
20 seen before?

21 A. Yes, I think I said I did.

22 Q. Did you disagree with any of the
23 statements that Mr. or Dr. Greig made in
24 connection with this report?

25 MR. SHAFFER:

1 Counsel, I think if you want to ask
2 him a broad-ranging, far-reaching question
3 like that, that you need to let him look
4 at the document.

5 EXAMINATION BY MR. MICHAEL GERTLER:

6 Q. Do you recall the document well
7 enough to answer that question?

8 A. I know I disagreed with some
9 points. Right now, I can't recall which they
10 were. I don't recall the document very well.

11 Q. Let the record reflect that I'll
12 hand the witness the document. I'll give you
13 my copy now to expedite things. It's "Exhibit
14 1728," "Scott Exhibit 1728." You'll see my
15 highlights.

16 A. (Witness reviews document.)

17 MR. SHAFFER:

18 Do you have another copy?

19 (Whereupon a discussion was held off
20 the record.)

21 MR. SHAFFER:

22 And your question is, -sir, whether
23 there are any statements in here that he
24 disagrees with?

25 MR. MICHAEL GERTLER:

1 Yes, whether there are statements
2 made in that report that he disagrees
3 with?

4 MR. SHAFFER:

5 The report appears to be some --
6 what? -- ten, fifteen pages.

7 MR. MICHAEL GERTLER:

8 All right.

9 MR. SHAFFER:

10 Given the scope of the question,
11 would this be a good time to take a break
12 for lunch and --

13 MR. MICHAEL GERTLER:

14 This is -- If you don't mind me
15 finishing this report and then we'll take
16 the break immediately thereafter. Since
17 I've already started on this report, I
18 would not like to interrupt that
19 discussion.

20 EXAMINATION BY MR. MICHAEL GERTLER:

21 Q. Sir, let me refer you to the third
22 page of the report. Well, it's actually the
23 second page of the report where it says, "The
24 future?" Do you see that?

25 A. "The future, question mark"?

1 Q. Yes.

2 A. Yes.

3 Q. And it reads, "Thus, we have an
4 emerging picture of a fast, highly pharmaco-
5 logically effective and cheap drug, in quotes,
6 "tobacco," which also confers flavor and manual
7 and oral satisfaction to the user." Did you
8 agree with Mr. Greig's characterization of
9 tobacco as a cheap drug?

10 A. No.

11 Q. Did you agree with his characteri-
12 zation of tobacco as being pharmacologically
13 effective?

14 A. Well, it is pharmacologically
15 active. I assume that's reasonably accurate.

16 Q. All right, sir.

17 MR. SHAFFER:

18 The question was "effective." You
19 answered "active," I believe.

20 MR. MICHAEL GERTLER:

21 I'm satisfied with that response,
22 that it was responsive to the word
23 "effective."

24 EXAMINATION BY MR. MICHAEL GERTLER:

25 Q. Sir, now turn to the last page,

1 please, "SUMMARY." Do you see that, sir?

2 A. Yes.

3 Q. And, first, he quotes from King
4 James. Do you see that?

5 A. Yeah.

6 Q. And then he makes his own
7 statement. And that's what I want to read to
8 you. "Let us provide the exquisiteness and
9 hope that they, our consumers, continue to
10 remain unsatisfied. All we would want then is
11 a larger bag to carry the money to the bank."

12 Would you agree with this statement
13 that he made there, sir?

14 A. No, of course not.

15 Q. What do you mean, "of course not"?

16 A. Well, I have to read back. But
17 he's referring to some -- I mean, this is all
18 some supposition. This isn't a scientific
19 document. And he's talking about people buying
20 a lot more cigarettes, if I recall right, for
21 low tars.

22 And that's just not the case.
23 People that smoke low tars smoke about the
24 same as regular, mid tars. It's just some
25 hypothesis. It's just not true. It's not true

1 in any kind of commercial terms. The products
2 are already out there.

3 Q. Well, what did you understand his
4 statement to mean when he says, "Let's keep our
5 consumers unsatisfied"?

6 MR. SHAFFER:

7 Object to the form.

8 EXAMINATION BY MR. MICHAEL GERTLER:

9 Q. Huh?

10 A. The best I recall -- I could read
11 the document -- was he was suggesting that
12 people that buy low tar cigarettes are not
13 satisfied, so they smoke more.

14 Q. Not satisfied with what?

15 A. With the taste, so they smoke more.

16 Q. It had nothing to do with nicotine?

17 A. It could have to do with whatever.

18 But the fact is it's not true.

19 Q. What did you understand it to have
20 to do with? Nicotine or taste?

21 A. It's an erroneous statement.

22 Q. Nicotine or taste?

23 A. What I understood the hypothesis to
24 be is that people that smoke low tar cigarettes
25 would smoke a lot more. That is just not true.

1 Q. In order to get their nicotine
2 level that they needed?

3 A. See, you can say whatever you want.
4 But the fact is people don't smoke more low tar
5 cigarettes, low nicotine cigarettes.

6 Q. I'm just asking you when you got
7 this report while you were employed at Brown
8 and Williamson whether that was your under-
9 standing, that he was referring to keep people
10 unsatisfied with reference to their nicotine
11 intake?

12 MR. SHAFFER:

13 Object to the form.

14 A. I didn't get this, as far as I know,
15 when I was at Brown and Williamson.

16 EXAMINATION BY MR. MICHAEL GERTLER:

17 Q. Oh, you didn't?

18 A. I only received this sometime
19 during depositions, as far as I can recall.

20 Q. Well, are you testifying that you
21 didn't receive this at Brown and Williamson?
22 Or you're just testifying you don't know
23 whether you received it?

24 A. I'm testifying that, to the best of
25 my recollection, I didn't receive this during

1 the contemporary time that this was published;
2 that I have seen it during some deposition.

3 Q. Did you ever contest the
4 authenticity of this document?

5 MR. SHAFFER:

6 Object to the form.

7 A. No reason to. No, I haven't.

8 EXAMINATION BY MR. MICHAEL GERTLER:

9 Q. Does it appear to be an authentic
10 document of British-American Tobacco Company?

11 MR. SHAFFER:

12 Object to the form.

13 A. It appears to be written by Colin
14 Greig and it's got stamps from BAT Co., so I
15 assume that's right.

16 EXAMINATION BY MR. MICHAEL GERTLER:

17 Q. And, in fact, you had communica-
18 tions with Colin Greig while you were at Brown
19 and Williamson and he was at BAT Co.; didn't
20 you, sir?

21 A. I don't recall that.

22 MR. MICHAEL GERTLER:

23 Well, we'll take our break now, sir,
24 and we'll pick that up after lunch.

25 THE WITNESS:

1 All right.

2 THE VIDEOGRAPHER:

3 Going off the record at 12:44.

4 (Whereupon a lunch recess was taken
5 at this time from 12:44 o'clock p.m. to
6 1:36 o'clock p.m.)

7 THE VIDEOGRAPHER:

8 We're back on the record at 1:36.

9 EXAMINATION BY MR. MICHAEL GERTLER:

10 Q All right. Mr. Kohnhorst, I had
11 asked you about communications, correspondence
12 that you had with Colin Greig, do you remember,
13 as we left for the break?

14 A. Yes.

15 Q And I'd like you to look now at
16 "Scott Plaintiffs' Exhibit Number 2120" for me
17 and see if you recognize that exhibit?

18 A. (Witness reviews document.)

19 Q The first page is a letter
20 addressed to you; correct?

21 A. Yes.

22 Q And the author of the letter is
23 C. I. Ayres?

24 A. Yes.

25 Q Who is Mr. Ayres?

1 A. He was -- I don't know exactly
2 his title or anything, but he was like an
3 administrator in Southampton, the best I can
4 recall.

5 Q. Southampton being BAT Co.?

6 A. Of the R & D unit at Southampton.

7 Q. Okay. And that's the sister
8 company or the parent company?

9 A. They were probably part of BAT Co.
10 at this time.

11 Q. All right, sir. And in that
12 letter, Mr. Ayres is referencing some notes
13 made by Colin Greig; correct?

14 A. Yes.

15 Q. And then attached to the letter,
16 Colin Greig is sending his notes from that
17 conference; correct?

18 A. I can't tell if this is the same
19 conference. And there may be something here
20 that -- They're talking about the structured
21 creativity conference or something like that.

22 Q. In the letter, Mr. Ayres said he
23 asked Colin Greig to bail him out and get
24 transcribed his own notes. And these were
25 enclosed.

1 A. Yeah, I see that.

2 Q. So and attached to the letter as
3 provided to us were what purports to be Colin
4 Greig's notes? "Yes" or "No"?

5 MR. SHAFFER:

6 Object to the form.

7 EXAMINATION BY MR. MICHAEL GERTLER:

8 Q. In other words, --

9 A. The document is signed by Colin
10 Greig, ~~so~~ -- But I don't recall seeing it and
11 I don't know anything about the document.

12 Q. Well, the letter is addressed to
13 you. And the purpose of the letter is to make
14 sure that you have the notes; correct? Isn't
15 that how you read the letter?

16 A. Yes.

17 Q. So you have no doubt that you
18 received this letter; correct?

19 A. I think it came to me, yes. I
20 don't recall it, but I think it did.

21 Q. And attached to the letter when it
22 came were the notes; correct?

23 A. There's some notes from Colin
24 Greig, yes.

25 Q. And when you received it, you would

1 have, in the ordinary course of your business,
2 reviewed the letter and the attached notes;
3 correct?

4 A. I may not have read it, but I'm
5 sure I read the cover letter. I don't recall
6 the document, I'm sorry.

7 Q. Well, the cover letter is just a
8 transmittal saying you should read the notes;
9 right?

10 A. Yes. It says he thinks that I'll
11 find these of interest.

12 Q. Well, why wouldn't you read them if
13 the whole purpose of sending you the notes was
14 for you to read?

15 MR. SHAFFER:

16 Object to the form.

17 A. I may have read them. I just don't
18 recall them.

19 EXAMINATION BY MR. MICHAEL GERTLER:

20 Q. You probably read them; correct?

21 A. I'm not sure of that.

22 Q. What are you trying to do now?
23 You're trying to read all the notes?

24 A. No, no, I'm just trying to see what
25 the -- I may have read the first page and there

1 may not have been interest. I'm just trying to
2 refresh my memory. I don't recall seeing the
3 document.

4 Q. Well, do you know of any reason why
5 you would not have read the notes that Mr.
6 Ayres sent to you in 1984 as evidenced by this
7 letter?

8 A. Yes, because I was sent so much
9 stuff, I didn't read everything. I would read
10 a summary. And if it was something I thought I
11 would have -- be interested in, I would read it
12 more carefully; if not, I didn't. So I just
13 don't recall.

14 Q. Well, aren't these notes summaries
15 of what transpired at the Montebello
16 conference?

17 A. That's what it says in 1963. So it
18 was, you know, a long time before my time,
19 so --

20 Q. In 1963 or 1983?

21 A. Well, you know, I'm not sure. It
22 looks like '63 on my print.

23 Q. You don't remember going to the
24 Montebello conference?

25 A. No, I don't recall.

1 Q. Well, the whole purpose of these
2 notes was to make it easy for you to review a
3 summary of what happened. Isn't it fair to
4 say, sir, that in the way you usually conducted
5 your business, you would have at least
6 attempted to review the notes?

7 MR. SHAFFER:

8 Object to the form.

9 A. If I was at the conference, I would
10 have normally, you know, at least reviewed the
11 notes, yes.

12 EXAMINATION BY MR. MICHAEL GERTLER:

13 Q. And when you received this letter
14 then with the attached notes, you would have at
15 least made an attempt to review them as best as
16 you could, correct?

17 A. I don't know if I went to this
18 conference. I said if I would have gone to the
19 conference, I would have reviewed it. I'm just
20 not sure I went.

21 Q. Well, why did Mr. Ayres send you
22 these notes and specifically indicate you would
23 be interested in them if you had not attended
24 the conference?

25 A. Well, I don't know. But perhaps

1 because I was responsible for RD&E at that
2 stage. It might have been that Bob Sanford
3 or someone else went. I just don't know.

4 Q. You just don't know?

5 A. That's what I said, yes, sir.

6 Q. And you don't even know what your
7 regular practice was at the time in B & W with
8 regard to receiving this kind of information?

9 A. I've never said that.

10 Q. I want to know what was your
11 regular practice? To attempt to read notes or
12 not to attempt to read notes directed to your
13 attention?

14 A. I got a lot, so I would screen
15 stuff. Things that I thought were important to
16 me, relevant, I would read. If I determined it
17 wasn't on a quick summary, I may not have read
18 it.

19 Q. Well, look at Page 10 at the top
20 under the section that is under the heading
21 "Physiological Consequences." Do you see that?

22 A. I do.

23 Q. In the first paragraph -- and try
24 to read with me -- it says, "It is well known
25 that nicotine can be removed from smoke by the

1 lung and transmitted to the brain within
2 seconds of smoke inhalation. Since it is the
3 major or sole pharmacologically active agent
4 in smoke, it must be presumed that this is its
5 preferred method of absorption and, thus, why
6 people inhale smoke."

7 Now, did I read it accurately?

8 A. Yes, I believe you did.

9 Q. Do you agree with that?

10 MR. SHAFFER:

11 Do you agree with the way -- Object
12 to the form.

13 EXAMINATION BY MR. MICHAEL GERTLER:

14 Q. Do you agree with Colin Greig's
15 statement that I just read contained in the
16 notes that were sent to you in 1984? Do you,
17 sir?

18 A. Well, not totally. But I don't
19 dramatically disagree. Obviously, there's no
20 question that nicotine is removed by the lungs
21 and very quickly absorbed into the bloodstream
22 and goes to the brain. There's no question
23 about that. People smoke and don't inhale, of
24 course. And absorption is in the mouth as well
25 as the lungs. So I think, I think it's

1 generally correct.

2 Q. Okay.

3 A. But it's not absolutely.

4 Q. All right, sir. And it's correct
5 that nicotine is the major or sole pharmaco-
6 logically active agent in smoke; correct?

7 A. As far as I know, that's correct.

8 Q. Okay. Now, did you read that when
9 you received that in 1984 from Mr. Greig?

10 MR. SHAFFER:

11 Object to the form.

12 A. I've already said I don't remember
13 reading this.

14 EXAMINATION BY MR. MICHAEL GERTLER:

15 Q. Well, do you know why Mr. Ayres
16 would have felt that you had an interest in
17 that specific area?

18 A. No, not right here now, I don't.

19 Q. But is it also fair to say that you
20 were familiar with Mr. Greig in terms of his
21 employment at BAT Co. in 1984?

22 A. I'm not certain if I knew him in
23 that period of time.

24 Q. But you don't question that you
25 received his notes in that period of time?

1 MR. SHAFFER:

2 Object to the form.

3 A. No, it appears that I received them.

4 EXAMINATION BY MR. MICHAEL GERTLER:

5 Q. You received them.

6 Okay, sir. And do you have any
7 recollection of ever questioning what Mr. Greig
8 said, either in that document or in the
9 previous document that we referred to that was
10 written by Mr. Greig?

11 MR. SHAFFER:

12 Object to the form.

13 A. I don't believe I had any follow-up
14 discussions with Colin Greig, as far as I can
15 recall.

16 EXAMINATION BY MR. MICHAEL GERTLER:

17 Q. Nor did you question either
18 document with anybody within Brown and
19 Williamson?

20 A. No. As I've said on certainly this
21 document, I don't -- I don't recall reading it,
22 so I don't have any reason to believe that I
23 discussed it with anyone.

24 Q. You're saying you don't recall
25 reading it, so you don't believe you discussed

1 it with anyone; is that what you're saying?

2 A. I said I don't recall reading it,
3 so I have no reason to believe that I discussed
4 it with anyone. I just have no recollection
5 about it.

6 Q. So focus on my question.
7 Do you have an independent
8 recollection today of having spoken to anyone
9 at B & W or questioned any aspect of Colin
10 Greig's notes or his report that you read from
11 previously?

12 A. No.

13 Q. Okay. Do you recall attending a
14 research conference in Rio de Janeiro, Brazil,
15 in August of 1983?

16 A. Do you want this back?

17 Q. Yes, I'll put that with the others.

18 A. I believe that was the first
19 conference that I've ever attended, if I'm not
20 mistaken.

21 Q. When you became Vice-President?

22 A. Yes, that would be correct.

23 Q. And responsible for research and
24 development?

25 A. And engineering, I believe, yes.

1 Q. And, in fact, you recall when you
2 attended the conference that you received a
3 copy of the report of the conference?

4 A. I don't independently recall it,
5 but there was generally a report after the
6 conferences that I would see.

7 Q. Do you recall the discussion at the
8 conference about nicotine?

9 A. No, not right now I don't.

10 Q. Now, this is 1983 when you went to
11 this conference; correct?

12 A. I can't remember precisely. But
13 that would be about the time frame I would have
14 gone to some R & D conferences.

15 Q. And that was a conference that was
16 attended to by all of the companies under the
17 umbrella of BAT; correct?

18 A. No, it would -- Normally, the
19 R & Ds were just the -- I'm sorry. The
20 participants would be the big companies that
21 had R & Ds, because there were a lot more
22 companies.

23 Q. The big BAT companies?

24 A. Well, it wouldn't be -- Yeah, it
25 would be the big companies owned by ultimately

1 the parent, British-American Tobacco, BAT.

2 Q. All right, sir. Do you recall
3 there being a concern expressed at that
4 conference with reference to attention on
5 the role of nicotine in the smoking process?

6 A. No, I don't recall that.

7 Q. Let me show you a copy of the
8 report. It's "2090."

9 (Whereupon a discussion was held off
10 the record.)

11 EXAMINATION BY MR. MICHAEL GERTLER:

12 Q. I'll show you my copy. It might
13 expedite things until we get the other one.

14 A. Okay. (Witness reviews document.)

15 Q. Do you see the cover page, sir?

16 A. Yes, I do.

17 Q. And is that the report of the
18 conference that took place in Rio de Janeiro?

19 A. It looks like this is a draft copy
20 of that meeting in Rio, yes.

21 Q. And is your name contained on the
22 front page as an attendee of that conference?

23 A. Yes, it is.

24 Q. And, in fact, as you sit here
25 today, you remember being an attendee?

1 A. Yes.

2 Q. Okay. Now, would you turn to the,
3 I think it's the second tab. Let's see. Yeah.
4 See if that's --

5 A. The second tab?

6 Q. No, the one before that try. Just
7 go through them and see the one that makes
8 reference to nicotine. Turn that tab to the
9 next tab. You can turn it to the next tab.

10 A. Okay.

11 Q. Okay. Turn it again. Go back,
12 sir, to where the tab is. Let me help you.

13 A. Sure.

14 Q. All right, sir. You see the tab
15 and you see the heading of "Nicotine"?

16 MR. SHAFFER:

17 What page is that, sir?

18 EXAMINATION BY MR. MICHAEL GERTLER:

19 Q. What page is that?

20 A. Thirteen, it looks like. Yes, 13.

21 I see it, yes.

22 Q. Okay, sir. Would you review that,
23 please?

24 A. Okay. (Witness reviews document.)

25 Okay.

1 Q. You see the factors that were
2 listed where the presenter of this conference
3 indicated that more needs to be known by the
4 various BAT companies? See those factors
5 listed?

6 A. Yes. I think this is referring to
7 the Southampton program. But, yes, I see the
8 factors.

9 Q. And Southampton, you're referring
10 to research and development?

11 A. Correct.

12 Q. And you were attending there
13 listening to this information as it was being
14 verbally communicated to the attendees;
15 correct?

16 A. Yes, I was involved with
17 discussions.

18 Q. Right, sir.

19 And whatever BAT did in
20 Southampton, you were going to be privy to
21 by way of sharing of information; correct?

22 A. I think all -- I think a large
23 portion of it that we supported, we would be
24 obviously privy to.

25 Q. Yes, sir.

1 And the factors that they were
2 concerned about researching at that time
3 included the effect on the transfer of nicotine
4 from the leaf to the smoke aerosol; correct?

5 A. That's what it says, yes.

6 Q. And factors that influenced the
7 rate of transfer of nicotine from particulate
8 matter to vapor phase; correct?

9 A. Yes, that's what it says.

10 Q. And the contribution of nicotine
11 to smoke sensory characteristics, including
12 harshness and irritation?

13 A. Yes, that's what it says.

14 Q. And then the sight mechanisms of
15 the absorption of nicotine within the human
16 system. Do you see that?

17 A. Yes, I see it.

18 Q. And the way nicotine stimulates
19 both the central nervous system and the
20 peripheral organs, that is, the heart and
21 the lung? Do you see that?

22 A. Yes, I see it.

23 Q. And the final one is the metabolism
24 of nicotine within the body, including rates in
25 equilibrium levels? Do you see that?

1 A. Yes, I do.

2 Q. Now, do you know, sir, for a fact
3 that that research was undertaken by
4 Southampton?

5 A. No.

6 Q. You don't know that?

7 A. No, I don't know that.

8 Q. And at the end of that particular
9 page in Paragraph 34, you see the sentence
10 where it says, "It is envisioned or envisaged
11 that such -- that much of such work will be
12 undertaken under contract"? Do you see that?

13 A. Yes, sir.

14 Q. What does that refer to? Contract
15 between whom and whom?

16 A. I don't know.

17 Q. Is that an outside -- contract with
18 an outside company?

19 A. I don't know.

20 Q. Is that what you would understand
21 it to be based on your experience?

22 A. Yes.

23 Q. Now, sir, before that, there's the
24 statement made in that same Paragraph 34, "The
25 developing program of research at Southampton

1 was supported, albeit that greater emphasis
2 should be placed on direct human studies rather
3 than on animals, particularly in view of recent
4 major advances in brain pharmacology." Do you
5 see that?

6 A. Yes, I do.

7 Q. What references are they making to
8 advances in brain pharmacology?

9 A. I'm sorry. I didn't quite hear
10 you.

11 Q. What are the studies or advances
12 they're referring to when they say "recent
13 advances in brain pharmacology"?

14 A. I don't have any idea.

15 Q. Are they talking about nicotine
16 there?

17 A. That would be my assumption because
18 it's the only thing identified regarding
19 pharmacology.

20 Q. All right, sir. Did you come back
21 to B & W and share this information with anyone
22 else at B & W?

23 A. Well, it came to others at B & W.
24 This is a draft, so I don't know what
25 ultimately was in the final -- But I don't

1 recall sharing it with anyone.

2 Q. All right, sir.

3 A. It did come to Bob Sanford as well
4 as myself.

5 Q. It stopped with you; correct?

6 A. I don't understand the question, it
7 stopped.

8 Q. If you didn't share it with
9 anybody, the only one who had the information
10 was you, sir?

11 A. No, that's not correct. That's
12 what I just said, it came to Bob Sanford.

13 Q. It came to Bob Sanford. And who is
14 Bob Sanford again?

15 A. He was the head of research and
16 development. This was a transition phase.

17 Q. Your immediate supervisor?

18 A. He was my immediate supervisor
19 when I was in R & D, but I was coming from a
20 different position into here. So I did not
21 report to him at this time.

22 Q. You didn't? Who did you report to
23 at that time?

24 A. Perhaps Wally Hughes or John Alar.

25 Q. You don't remember?

1 A. I don't remember which one of them.
2 It was one of those two, to my best
3 recollection.

4 Q. What years did you report to Mr.
5 Sanford or Dr. Sanford?

6 A. Dr. Sanford? I reported to him
7 from when I joined the company. Not directly.
8 I was in his department.

9 Q. Well, you testified earlier there
10 was a period of time that he was your direct
11 supervisor, didn't you?

12 A. Yes. And that would have been --

13 Q. Now, what years was he your direct
14 supervisor?

15 A. When I was in the development
16 center, 1977 through '78. About two years.
17 Previous to that, I was in his department
18 but he was not my direct supervisor.

19 Q. So he was never your direct
20 supervisor when you were in R & D?

21 A. No. When I was in the development
22 center, he was. And that was part of Bob
23 Sanford's responsibility. But it was not
24 called R & D.

25 Q. So when you moved to RD&E, he was

1 never your direct supervisor?

2 A. That's correct.

3 Q. Now, did you share this information
4 with your direct supervisor?

5 A. I'm -- I don't recall, but I would
6 -- I don't recall.

7 Q. Now, do you remember attending a
8 nicotine conference in Southampton in 1984?

9 A. No.

10 Q. Do you remember receiving a report
11 on the conference in 1984?

12 A. No.

13 (Whereupon a discussion was held off
14 the record.)

15 EXAMINATION BY MR. MICHAEL GERTLER:

16 Q. Let me show you a copy first of the
17 nicotine conference report as provided to me.
18 And that is "Scott Plaintiffs' Exhibit Number
19 2146." Ask you if you recognize that document,
20 sir?

21 A. (Witness reviews document.) No, I
22 don't recognize it.

23 Q. You don't recognize that, sir? You
24 didn't receive it while you were at Brown and
25 Williamson?

1 A. I don't recall receiving it. It
2 doesn't show me as a copyholder, either.

3 Q. Does it show anybody in the R & D
4 department?

5 A. Yes.

6 Q. Who?

7 A. M. L. Reynolds and R. A. Sanford.

8 Q. And who is R. A. Sanford?

9 A. He's head of research and
10 development.

11 Q. And what year was that, sir?

12 A. 1984.

13 Q. Does that indicate to you that he
14 was your direct supervisor in 1984?

15 A. No.

16 Q. Well, weren't you in R & D? Or was
17 he in Southampton?

18 A. No, he was in Louisville. He was
19 head of Brown and Williamson R & D until I
20 took over. I was, during these years prior
21 to taking over as Vice-President of Research,
22 Development and Engineering, I was reporting
23 either to Wally Hughes or John Alar, ultimately
24 Tommy Sandefur when -- I think Tommy Sandefur,
25 eventually, when I took over.

1 Q. Well, let's get this straight, sir.
2 The document before you now is dated 1984;
3 correct?

4 A. Right.

5 Q. June?

6 A. Yes.

7 Q. And Mr. -- Is it Dr. Sanford?

8 A. Yes.

9 Q. Is listed on the document as a
10 recipient or an attendee; correct? Excuse me.
11 Let me rephrase that. The document before you
12 now is the nicotine conference that occurred in
13 June of 1984. And a distributee of that
14 particular report is Dr. Sanford; correct?

15 A. Yes.

16 Q. Dr. Sanford was in Louisville in
17 the R & D department --

18 A. Yes.

19 Q. -- in 1984?

20 A. I assume so. It looks right, yes.

21 Q. And you were in the R & D
22 department in Louisville in 1984?

23 A. This might have been during the
24 transition time. I was not in the department.
25 I was responsible when I came back for R & D.

1 Q. Well, you testified earlier, sir,
2 that you went to that department in 1983,
3 stayed there four years until 1987, and that's
4 when the transition took place; didn't you?

5 A. Well, then, I may have been
6 responsible for R & D during this period. I
7 don't recall the precise date. I mean, that's
8 what's causing the confusion. But I don't
9 recall the precise date.

10 Q. Well, if you were in R & D between
11 '83 and '87, and Dr. Sanford was the head of
12 R & D in that period, you would have had to
13 have reported to him?

14 A. There was a period of time after I
15 became Vice-President of Research, Development
16 and Engineering that I think Bob Sanford took
17 another title until he retired. This may have
18 been that period of time. He became like the
19 Vice-President of Technology or something. But
20 I didn't report to him during that period.

21 Q. You sound very unsure of yourself.
22 Are you, sir?

23 A. About what aspects?

24 Q. About when you reported to Dr.
25 Sanford and when he was your supervisor.

1 A. I'm uncertain about the precise
2 dates. I'm very clear that I worked for R & D
3 since I joined the company through the develop-
4 ment center, and I reported directly to him
5 those years. And those were -- After that, I
6 didn't report to him.

7 Q. Well, whatever that means, let's
8 look back at the nicotine conference report.
9 And let me ask you this: Did anybody -- Well,
10 more specifically, did Dr. Sanford ever share
11 this kind of information with you when he
12 received it?

13 A. I don't recall him sharing this
14 with me, no.

15 Q. Well, in the ordinary course of
16 business, was it his procedure to share
17 relevant R & D information with you that he
18 received?

19 MR. SHAFFER:

20 Object to the form.

21 A. He would not share everything he got
22 by any means, so the only thing that I think --
23 which would be very few -- would be things that
24 he thought I needed to have or was working on
25 or something.

1 EXAMINATION BY MR. MICHAEL GERTLER:

2 Q. Well, if there was a report of a
3 conference that devoted itself entirely to
4 nicotine that came to the attention of Dr.
5 Sanford, why wouldn't he share it with those
6 in the R & D department?

7 MR. SHAFFER:

8 Object to the form.

9 EXAMINATION BY MR. MICHAEL GERTLER:

10 Q. Why wouldn't he have?

11 MR. SHAFFER:

12 Same objection.

13 A. Ultimately, most of these reports
14 or abstracts would go into the library. They
15 would be available to people. He didn't see
16 any need to sit down and discuss this with me.
17 I was not involved with this kind of activities
18 in those days. I was more in the process
19 engineering and a senior manager, so it was not
20 an area that I had a lot of knowledge about.

21 MR. MICHAEL GERTLER:

22 Let's see, sir.

23 (Whereupon a discussion was held off
24 the record.)

25 MR. MICHAEL GERTLER:

1 Let's take just a one-minute recess
2 and let me get my bearings here, sir.

3 THE VIDEOGRAPHER:

4 We're off the record at 2:04.

5 (Whereupon a brief recess was taken
6 at this time from 2:04 o'clock p.m. to
7 2:09 o'clock p.m.)

8 THE VIDEOGRAPHER:

9 We're back on the record at 2:09.

10 EXAMINATION BY MR. MICHAEL GERTLER:

11 Q. All right, sir. The document I
12 have just handed you, would you describe it,
13 please?

14 A. It's a letter to me from C. I.
15 Ayres. I was looking for a date real quickly.
16 Oh, it's January 1994.

17 Q. January what?

18 A. 1994. Oh, maybe it's '84. These
19 prints are poor. Sorry.

20 Q. It is 1984; correct, sir?

21 A. I think that's right.

22 MR. SHAFFER:

23 Well, don't speculate or guess.

24 EXAMINATION BY MR. MICHAEL GERTLER:

25 Q. All you have to do is look at the

1 letter for a moment and realize it's 1984;
2 right, sir?

3 A. Yeah, it refers to this conference
4 that took place in 1984.

5 Q. And the conference that it refers
6 to is the nicotine conference, though, I just
7 talked to you about; correct?

8 A. Yes, that appears right.

9 Q. And that letter is addressed to
10 you, sir; correct?

11 A. Yes.

12 Q. And that letter is requesting that
13 you help formulate the issues for that
14 conference; isn't that correct, sir?

15 A. (Witness reviews document.) He's
16 asking me -- I'm sorry, it took me a second to
17 find it -- asking me to confirm the delegates
18 from Louisville, so he's asking me to send
19 someone.

20 Q. What's Number 2?

21 A. I think it's -- I'm sorry, the copy
22 is very poor. But general comment on the
23 proposed format of the conference perhaps.

24 Q. Number 3?

25 A. "Views on the topic proposed, that

1 is, an indication of those you regard as of
2 major importance."

3 Q. Number 4?

4 A. "An indication of the topics on
5 when Louisville --"

6 Q. "On which --"

7 A. Oh, is it "which"? Thank you.

8 Q. "-- Louisville would wish...." Go
9 ahead, sir.

10 A. "...to make specific contributions;
11 that is, I know that Lance Reynolds has had
12 an ongoing interest in --" I can't read that.

13 Q. Enkephalin?

14 MR. SHAFFER:

15 Excuse me. Do you have another copy
16 of this? Since apparently the copy is not
17 good, it's hard to read. I'd like to have
18 a copy to follow along, if I may.

19 MR. MICHAEL GERTLER:

20 Well, let's go on another brief
21 recess here.

22 THE VIDEOGRAPHER:

23 Off the record at 2:12.

24 (Whereupon a brief recess was taken
25 at this time from 2:12 o'clock p.m. to

1 2:13 o'clock p.m.)

2 THE VIDEOGRAPHER:

3 We're back on the record at 2:13.

4 (Whereupon a discussion was held off
5 the record.)

6 EXAMINATION BY MR. MICHAEL GERTLER:

7 Q. Your attorney or the Brown and
8 Williamson attorney is now reading the letter
9 himself. And when he finishes, I'll read it
10 into the record, that last section that you
11 had difficulty reading.

12 All right, sir. Let me read this
13 into the record, this last item that you were
14 asked to do. And I'll read it directly from
15 the letter.

16 MR. SHAFFER:

17 Well, is he going to have a copy of
18 it while you're reading it?

19 MR. MICHAEL GERTLER:

20 No, he's going to look on with me
21 while I read it because he couldn't read
22 it in the first place, he said. So I
23 don't know why it helps.

24 EXAMINATION BY MR. MICHAEL GERTLER:

25 Q. "But an indication of the topics on

1 which Louisville would wish to make specific
2 contributions; that is, I know that Lance
3 Reynolds has had an ongoing interest in
4 enkephalin, et cetera. And the conference
5 would benefit from an overview of this area
6 from Louisville."

7 That seems to be accurate; right?

8 A. Yes.

9 Q. Yes.

10 And this letter indicates to me,
11 sir, that you knew all about the nicotine
12 conference back in 1984; correct?

13 A. Well, obviously, I was being
14 informed that there was a conference. And
15 there was notes sent out, undoubtedly, to all
16 the heads. It's probably the same letter.

17 Q. Does that refresh your memory at
18 all about this report that I just showed you
19 about whether you saw it before?

20 A. No, I'm not sure that I did read
21 the report. I do remember now the discussion
22 about the conference and I do remember talking
23 with Lance Reynolds about it. And, undoubtedly,
24 Lance went to the conference based on the notes
25 here.

1 Q. But you were specifically being
2 asked to propose a format for that conference?

3 A. Well, that may be what the letter
4 says. But, obviously, I wasn't familiar with
5 the topic. I didn't have any direct involve-
6 ment at all, and I passed that to Lance
7 Reynolds. It came to me because I was head of
8 R & D just recently.

9 Q And you, sir, received the letter
10 asking you for your views on what topics to
11 discuss at the nicotine conference; correct?

12 A. Of course. That's what I said.
13 It looks like the same request probably went to
14 all the potential participants. That would be
15 standard practice to ask for their input.

16 Q And did you discuss those areas
17 that you were requested to give input on with
18 anyone at Brown and Williamson?

19 A. I don't think I had any input on it
20 at all. I think I asked Lance to, to the best
21 of my recollection, to handle it.

22 Q. And you were -- Lance's
23 supervisor; correct?

24 A. Yes.

25 Q. So this whole issue of nicotine as

1 discussed in that conference was part of what
2 was being researched in RD&E at Louisville?

3 A. No, I don't think so. I'm not
4 aware of any topics that we were involved with
5 directly on these topics. This looks like this
6 is a Southampton program, to the best of my
7 recollection. We didn't have these programs
8 going on at Brown and Williamson.

9 Q. Well, why would Southampton ask you
10 at Louisville to comment on a proposed format
11 for the entire conference if you knew nothing
12 about it?

13 A. I don't know. But that's a fact,
14 I didn't know anything about it except the
15 letter.

16 Q. But the people in your department
17 knew something about it; didn't they, sir?

18 A. Sure. Lance Reynolds was certainly
19 well-read. What he knew exactly, I didn't know
20 at that stage.

21 Q. You didn't even know what your
22 people working in your department were working
23 on at the time?

24 MR. SHAFFER:

25 Object to the form.

1 EXAMINATION BY MR. MICHAEL GERTLER:

2 Q. Did you know what the people in
3 your department were working on?

4 A. A lot of it, yes.

5 Q. What about in the area of nicotine?

6 A. Yeah, I'm unaware of any specific
7 work we were doing on nicotine then or later.
8 I mean, it's possible there was some small
9 activity. But there was no big program.

10 Q. And they asked you to indicate
11 the topics on which you would wish to make
12 a specific contribution to the nicotine
13 conference. And, to the best of your recol-
14 lection, you weren't doing any work in your
15 department on that area?

16 MR. SHAFFER:

17 Object to the form.

18 EXAMINATION BY MR. MICHAEL GERTLER:

19 Q. Is that your statement, sir?

20 A. Yes. To the best of my
21 recollection, we weren't doing any significant
22 work in that area. I think this is a letter
23 request that went out to all the R & Ds, so it
24 wasn't particularly tailored as a request to
25 me.

1 Q. Well, now, this letter, sir, was
2 tailored specifically to you, correct?

3 A. It is because it mentions Lance
4 Reynolds as an example. But I think that
5 general request would have gone out to the
6 R & D heads.

7 Q. But this letter was addressed
8 specifically to you?

9 MR. SHAFFER:

10 Let me object. You're asking
11 questions about a document.

12 MR. MICHAEL GERTLER:

13 Yes, sir.

14 MR. SHAFFER:

15 You are the only person in this room
16 that has a copy of the document. You may
17 well be quoting from the document. And I
18 think it's only appropriate if you're
19 going to hold it in front of you and ask
20 questions specifically about it that you
21 let the witness look at it and let me have
22 a copy.

23 MR. MICHAEL GERTLER:

24 Well, he has seen it, he has
25 reviewed it.

1 MR. SHAFFER:

2 Well, I understand he's seen it four
3 or five minutes ago.

4 MR. MICHAEL GERTLER:

5 Okay. All I'm asking him for is the
6 addressee's name. And it seems to me he
7 ought to remember that.

8 MR. SHAFFER:

9 Well, could we just take a short
10 break and get copies of these documents?

11 MR. MICHAEL GERTLER:

12 Sure.

13 THE VIDEOGRAPHER:

14 Off the record at 2:19.

15 (Whereupon a brief recess was taken
16 at this time from 2:19 o'clock p.m. to
17 2:26 o'clock p.m.)

18 THE VIDEOGRAPHER:

19 We're back on the record at 2:26
20 p.m.

21 EXAMINATION BY MR. MICHAEL GERTLER:

22 Q. All right, sir. You were the sole
23 addressee on this letter; correct?

24 A. Yes.

25 Q. Now, what on this document

1 indicates to you that all other heads of R & D
2 and all of the other BAT companies received
3 this request?

4 A. There isn't anything that really
5 suggests that. It's normal practice to ask
6 for input from all the participants, but that
7 was my only reason for suggesting that. In
8 addition, I know so little about the topic,
9 it was an unusual request as I received it.

10 Q. Yeah. But you said Mr. Reynolds
11 knew a lot more about the topic than you did;
12 correct?

13 A. I don't recall saying that exactly.
14 But, certainly, Lance knew a lot more about
15 tobacco chemistry than I do.

16 Q. And that includes nicotine --

17 A. Yes.

18 Q. -- correct?

19 A. Of course.

20 Q. Now, what subjects did you respond
21 to Mr. Ayres that you would like to see
22 discussed at the nicotine conference?

23 A. I don't think I made any response
24 back to him directly. My assumption is that
25 Lance and/or Bob Sanford made some communica-

1 tions. I didn't have anything, really, any
2 involvement with the conference or any
3 discussions that I recall afterwards.

4 MR. SHAFFER:

5 Mr. Gertler, before we leave this,
6 there's one sentence that's underlined
7 on Page 1. Do you know whose underlining
8 that is?

9 MR. MICHAEL GERTLER:

10 That's my underlining. Because the
11 only copy I had available here today was
12 the one I had worked on. It's my work
13 product. But I thought to expedite
14 matters, I'd share it with the witness.
15 And that was just an area that I was
16 interested in.

17 And that's the reason I only give
18 the Scott Exhibit Numbers so that -- You
19 know, I don't put these copies into the
20 record.

21 MR. SHAFFER:

22 Okay.

23 MR. MICHAEL GERTLER:

24 Nobody is going to see them other
25 than the witness and the lawyers here.

1 (Whereupon a discussion was held off
2 the record.)

3 EXAMINATION BY MR. MICHAEL GERTLER:

4 Q. All right, sir. Actually, why did
5 you keep yourself isolated or insulated from
6 the nicotine discussions that were going on in
7 your department?

8 MR. SHAFFER:

9 Object to the form.

10 A. I'm not aware that I kept myself
11 insulated. The only separation that took place
12 during the transition period was that Bob
13 Sanford continued to deal with any of the
14 smoking and health issues. And I didn't get
15 involved with it, I had no background at all.

16 So as far as it relates to
17 nicotine, I'm unaware of keeping myself not
18 involved. But it was -- there was no intention
19 to do that.

20 EXAMINATION BY MR. MICHAEL GERTLER:

21 Q. Well, wasn't that part of your job
22 over there, to keep any information about
23 nicotine addiction and pharmacology away from
24 B & W so you would never have to testify about
25 it?

1 MR. SHAFFER:

2 Object to the form.

3 EXAMINATION BY MR. MICHAEL GERTLER:

4 Q. Isn't that true, sir?

5 A. No, it wasn't part of my job
6 description at all. I was responsible for
7 R & D, the management of it, executing the
8 agreed programs.

9
10
11 * * * * *
12 in
13 (Page 188, Line 9 through Page 208,
14 Line 22 was placed under seal.)
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Q. Now, let's go to the next document, sir. This is Document 2411. And it purports to be directed to you, Mr. E. E. Kohnhorst.

1 A. (Witness reviews document.)

2 Q. Now, is it a fact, sir, that this
3 is an internal correspondence directed
4 specifically to you?

5 A. Yes.

6 Q. And did it come from someone in
7 your department by the name of D. L. Gordon?

8 A. Yes, it did.

9 Q. And is it with reference to the
10 very same meeting I just discussed with you
11 that took place on February 14th, 1986?

12 A. That appears right.

13 Q. It does.

14 MR. SHAFFER:

15 Object to your narrative comments on
16 his answer.

17 EXAMINATION BY MR. MICHAEL GERTLER:

18 Q. And, sir, is it also a discussion
19 now involving you directly about which projects
20 you want to be -- have received by B & W?

21 A. (Witness reviews document.)

22 Q. Is that what it talks about?

23 A. This is a discussion about the
24 information that we wanted to get, yes.

25 Q. And in the first paragraph, though

1 -- read along with me and make sure that I'm
2 reading this accurately -- the first paragraph
3 says, "This note and the attachments will
4 summarize discussions held in your office on
5 February 14, 1986." Now, "your office" means
6 Earl Kohnhorst's office; correct?

7 A. Yes, I believe so.

8 Q. Yes.

9 Then I go on. "At this meeting, we
10 received BAT projects and agreed on a summary
11 listing of those that we will request to be
12 barred from obtaining information on the BAT
13 group information system." Who is the "we"
14 there?

15 MR. SHAFFER:

16 Object to the form of the question
17 and the emphasis that you place on various
18 words in the question. I think that's
19 improper.

20 MR. MICHAEL GERTLER:

21 Well, when you ask on redirect, you
22 can de-emphasize or re-emphasize any way
23 you want.

24 MR. SHAFFER:

25 Well, I object to any emphasis that

1 you place on any phrases that you quote.

2 MR. MICHAEL GERTLER:

3 I'm sorry you don't like my
4 interrogating technique, but I will
5 continue.

6 MR. SHAFFER:

7 I'm objecting to the form of it. By
8 improper emphasis on certain words as you
9 quote from the document.

10 MR. MICHAEL GERTLER:

11 That's why we're advocates in the
12 case. You do it your way.

13 EXAMINATION BY MR. MICHAEL GERTLER:

14 Q. Now, sir, let me ask you did I read
15 that correctly?

16 A. I think you read one word wrong.

17 Q. What's that?

18 A. I think you said "received" instead
19 of "reviewed."

20 Q. I did? Well, let's read it again
21 and let's read the pertinent part. And you
22 correct me if I'm wrong. "This note and the
23 attachments will summarize discussions held in
24 your office on February 14, 1986." The "your
25 office" refers to you; right, Mr. Kohnhorst?

1 A. I believe that's right.

2 Q. It goes on to read, "At this
3 meeting, we reviewed BAT projects and agreed on
4 a summary listing of those that we will request
5 we be barred from obtaining information on the
6 BAT group information system."

7 Did I read it correctly?

8 A. I think so.

9 Q. Now, who is the "we" be barred?

10 A. Now, we were asking for specific
11 projects from BAT and only those coming over
12 this group information system that was going
13 to be developed.

14 Q. And the "we" is Brown and
15 Williamson; correct?

16 A. Yes.

17 Q. And the group information system
18 was the system provided for transmitting
19 scientific documents; correct?

20 A. I don't recall specifically. I
21 think it was to do like project updates. I
22 think major reports would still come in, what
23 we called, you know, brown folder reports,
24 reports, hard copy reports. And, ultimately,
25 the system didn't accommodate selection, so we

1 got all the documents.

2 Q. So you, in this letter, indicate
3 you wanted certain documents barred but later
4 on you say you lifted that request?

5 A. No.

6 MR. SHAFFER:

7 Object to the form.

8 THE WITNESS:

9 No.

10 EXAMINATION BY MR. MICHAEL GERTLER:

11 Q. Or you never lifted the request?

12 A. No.

13 Q. Okay.

14 A. I'd like to answer the question,
15 though.

16 Q. Oh, okay.

17 A. We were requesting specific items
18 and not everything. The system wouldn't
19 accommodate, as best I remember, selective
20 sending, so we got all the updates that
21 existed. So I think, I think this didn't
22 really narrow down specifically to what our
23 interests were. It all came over the system.
24 That's to the best of my understanding.

25 Q. You said to the best of your

1 understanding. So you must have sent a letter
2 after this retracting your request to bar
3 certain types of projects; right?

4 MR. SHAFFER:

5 Object to the form.

6 A. We never retracted anything. We
7 asked for specific projects only. And the
8 best of my understanding is they couldn't
9 accommodate. They had to send all that was
10 in the system.

11 EXAMINATION BY MR. MICHAEL GERTLER:

12 Q. Well, you sent copies of this
13 particular document to J. K. Wells and J. G.
14 Esterle; is that correct?

15 A. No, I didn't.

16 Q. Oh, you didn't.

17 That was Mr. Gordon who was in your
18 group working for you who sent them?

19 A. Yes, he sent their copies.

20 Q. And you had nothing to do with that
21 decision, too?

22 A. He, obviously, was informing the
23 people that were involved in the earlier
24 discussion, the one that I unfortunately was
25 only at for a short amount of time. So this

1 was a summary of the same people.

2 Q. So this Mr. Esterle, what was his
3 job? Was he at B & W?

4 A. Yes.

5 Q. What was his job?

6 A. At one stage he was the Number 2 of
7 R & D, like the lab manager, so he was a very
8 senior manager within R & D.

9 Q. Was he above you?

10 A. No.

11 Q. Below you?

12 A. Yes.

13 Q. And Mr. Wells was the attorney and
14 Mr. -- That's it, Mr. Wells was the attorney?

15 A. Correct.

16 Q. You didn't include Mr. Pepples in
17 this correspondence; did you? In copying him?

18 MR. SHAFFER:

19 Object to the form.

20 A. I didn't send the copies out. It
21 was Dave Gordon who sent the copies out. But
22 it doesn't show Mr. Pepples as receiving a
23 copy.

24 EXAMINATION BY MR. MICHAEL GERTLER:

25 Q. Well, how did you communicate to

1 Mr. Pepples that you wanted to retract what
2 was contained in this document?

3 A. We never -- if your word was
4 "contracted" -- anything that was in this
5 document.

6 Q. Okay. So that's what I want to
7 know. Did you ever make a decision to change
8 what you included in this document about
9 barring certain projects?

10 MR. SHAFFER:

11 Object to the form of the question.

12 A. I think I've said -- answered this,
13 So --

14 EXAMINATION BY MR. MICHAEL GERTLER:

15 Q. Do it one more time.

16 A. Which is to say we made a specific
17 request for what we wanted, they were unable to
18 accommodate that with the system. So we were
19 told they couldn't send us only documents that
20 we were interested in. They were all on the
21 system.

22 Q. Let's read directly from what you
23 said at that time, sir.

24 A. Yes.

25 Q. Quote, "We request to be -- we be

1 barred." Do you see that? "From obtaining
2 information."

3 MR. SHAFFER:

4 Let me object to the form of the
5 question.

6 MR. MICHAEL GERTLER:

7 Yes, sir.

8 MR. SHAFFER:

9 That's the third time you've quoted
10 it.

11 MR. MICHAEL GERTLER:

12 Yes, sir.

13 MR. SHAFFER:

14 And you did emphasize that word
15 "barred" again improperly. And I object
16 to the form.

17 MR. MICHAEL GERTLER:

18 Yes, sir.

19 EXAMINATION BY MR. MICHAEL GERTLER:

20 Q. Now, did you ever change your
21 decision to request to be barred from obtaining
22 information?

23 MR. SHAFFER:

24 Object to the form.

25 A. I never made a decision to bar

1 anything. I made a decision of what is useful
2 and what we should receive. And there was an
3 attempt to just efficiently receive what is
4 useful to us. The fact is the system didn't
5 accommodate that and we received it all, to
6 the best of my recollection.

7 EXAMINATION BY MR. MICHAEL GERTLER:

8 Q. Well, why did your employee, Mr.
9 Gordon, use the word "barred" in his statement?

10 A. I don't know. It may be a
11 technical term as it relates to the computer.

12 Q. And did you ever talk to him about
13 that?

14 A. Was there a reason why I should?

15 Q. Well, if it was improper, you never
16 asked for anything to be barred; did you?

17 A. I didn't say it was improper.

18 Q. Well, was it accurate that you did
19 ask for certain things to be barred?

20 MR. SHAFFER:

21 Object to the form.

22 A. That's exactly what I said. I asked
23 for specific things to be included.

24 EXAMINATION BY MR. MICHAEL GERTLER:

25 Q. No, I said "barred."

1 A. I didn't ask for anything to be
2 barred.

3 Q. So this is --

4 A. I identified what was useful to us
5 at Brown and Williamson in our market. And the
6 things that were -- that weren't interesting to
7 us coming from a myriad of sources, we didn't
8 pull in.

9 Q. So Mr. Gordon misrepresented what
10 you really wanted when he used the word
11 "barred", right?

12 A. He didn't misrepresent it to me. I
13 understood what that meant. We were going to
14 get what we asked for and not what we didn't.

15 Q. All right, sir. And on the next
16 page of the document, let me read that
17 paragraph. "Regarding information we obtained
18 from the system, it was agreed that myself and
19 Gil Esterle would review and alert the law
20 department on new entries or updates which may
21 need review."

22 Now, what did you mean when you
23 indicated here that you needed to include the
24 law department in reviewing projects?

25 MR. SHAFFER:

1 Object to the form.

2 A. I didn't -- I didn't write this and
3 I didn't say that.

4 EXAMINATION BY MR. MICHAEL GERTLER:

5 Q. Well, you knew what your employee
6 was writing; didn't you?

7 A. I certainly would have read this.

8 Q. Yes.

9 A. And I don't -- I didn't read it at
10 the time or now anything other than it's an
11 ongoing collaboration. If things change in
12 terms of what we're going to be receiving, that
13 they would talk with the law department.

14 Q. Doesn't it say any new entries and
15 any updates may need to be reviewed by the law
16 department?

17 MR. SHAFFER:

18 That's an improper quote. I object
19 to the form. You misquoted it.

20 EXAMINATION BY MR. MICHAEL GERTLER:

21 Q. Well, let me quote it verbatim.
22 It says, "New entries or updates which may
23 need review by the law department." Correct?

24 A. Well, that's not the way it's
25 written but --

1 Q. Well, you read it.

2 A. Well, it says "It was agreed that
3 myself," that means Dave Gordon in this
4 instance, "and Gil Esterle would review and
5 alert the law department on new entries or
6 updates which may need review."

7 Q. Now, why would employees in your
8 department working under you need to
9 collaborate with the law department on projects
10 that were being sent to B & W by BAT?

11 A. No, it doesn't say collaborate. It
12 just says that they would alert them so that
13 if there's an issue that needs to be -- have a
14 legal input, they would get it.

15 Q. Is that on scientific projects?

16 A. This was regarding communications
17 from individuals outside of Brown and
18 Williamson, so it was information that was
19 coming in -- intended to come in.

20 Q. Look at the next page on the Table
21 1, which were the projects that your department
22 wanted excluded, sir.

23 A. Yes.

24 Q. Are those the kinds of projects
25 that you might want to alert the law department

1 about?

2 A. Some maybe and some not.

3 Q. Which ones in this list might you
4 want to alert the law department about?

5 A. Well, perhaps "Smokeless Products
6 Biological."

7 MR. MICHAEL GERTLER:

8 Okay. Let's take just a five-
9 minute break, please. And we'll come back
10 to this.

11 THE VIDEOGRAPHER:

12 Going off the record at 3:05. This
13 is the end of Tape 2.

14 (Whereupon a brief recess was taken
15 at this time from 3:05 o'clock p.m. to
16 3:16 o'clock p.m.)

17 THE VIDEOGRAPHER:

18 We're back on the record at 3:16.

19 This is the beginning of Tape Number 3.

20 EXAMINATION BY MR. MICHAEL GERTLER:

21 Q. All right, sir. The item that you
22 said you might want to alert the law department
23 about was Number 329, "Smokeless Products
24 Biological." Why did you select that one?

25 MR. SHAFFER:

1 I object to the form.

2 A. I was just trying to give you an
3 example. You said what might we alert the law
4 department? Obviously, if there was some work
5 going on in another country where there was
6 controlling agencies or governments requiring
7 information or indices that might be used or
8 promulgated in the States, you know, it would
9 be sensible to alert them.

10 EXAMINATION BY MR. MICHAEL GERTLER:

11 Q. In other words, you say that Item
12 Number 329 was going on in another country,
13 meaning Canada?

14 A. Yeah.

15 Q. Well, all of these projects were
16 going on in other countries other than the
17 United States; isn't that correct?

18 A. Yes. This short list here, yes.

19 Q. Was there any reason for that?

20 A. Any reason for?

21 Q. For no projects going on in the
22 United States?

23 A. Well, there were projects going on
24 in the United States.

25 Q. Oh, I see. But none of them on

1 this list were going on in the United States?

2 MR. SHAFFER:

3 Object to the form.

4 EXAMINATION BY MR. MICHAEL GERTLER:

5 Q. Were they?

6 A. There may have been projects very
7 related to some of these going on in the United
8 States, that's possible.

9 Q. Wasn't that one way to keep the
10 information away from plaintiffs was to conduct
11 the projects outside of the United States?

12 MR. SHAFFER:

13 I object to the form.

14 A. We did the research in the United
15 States that we needed for our market. We did,
16 as far as I know, almost exclusively.

17 EXAMINATION BY MR. MICHAEL GERTLER:

18 Q. Wasn't that one aspect of the
19 discussions that you had in that meeting is
20 whether to conduct the project research outside
21 of the United States?

22 A. I don't know what discussion you're
23 referring back to now.

24 Q. The one we've just been talking
25 about for the last hour. You want me to get

1 that information back out again about that
2 discussion you were having with the two lawyers
3 and Mr. Esterle and yourself? Do you remember
4 that meeting that you had?

5 A. I recall a very brief meeting that
6 I was only at a portion of with one lawyer and
7 two scientists or engineers.

8 Q. Well, at that meeting that you were
9 only at a portion of that you are testifying
10 about now, didn't they discuss whether to
11 conduct projects in the United States or
12 outside of the United States?

13 A. I'm not aware of that being the
14 topic. The topic was what information we want
15 to receive from outside. We were conducting
16 all the work in Brown and Williamson, as I
17 recall, in the Brown and Williamson laboratory
18 and/or contracting them through some agencies
19 perhaps.

20 Q. I see.

21 A. But that would be a minimum effort.

22 Q. I see. Well, anyway, the document
23 we're looking at pertained to the excluded
24 projects were all done outside the United
25 States; correct?

1 MR. SHAFFER:

2 Let me object to the form. I don't
3 know which documents you're talking about.

4 MR. MICHAEL GERTLER:

5 Oh, you don't?

6 MR. SHAFFER:

7 I really don't.

8 MR. MICHAEL GERTLER:

9 All right.

10 MR. SHAFFER:

11 You've had three or four that you've
12 made reference to.

13 MR. MICHAEL GERTLER:

14 This is "Exhibit Number 2411." And
15 we're on Page Bates Number B & W 136189.
16 And we've just been testifying -- we
17 haven't -- but the witness has been
18 testifying about this document.

19 And he said the reason he might
20 report this to the law department, this
21 Number 329, was because it pertained to
22 something going on outside the United
23 States. And I asked the witness weren't
24 all these projects going on outside the
25 United States.

1 THE WITNESS:

2 But that was not my answer.

3 EXAMINATION BY MR. MICHAEL GERTLER:

4 Q. Oh, what was your answer then?

5 A. The best I can recall, restated, I
6 said -- You were asking for an example of what
7 we might alert the law department. And I said
8 -- I just picked one without any particular
9 careful thought and said if it related to
10 something that might be a government agency or
11 a quasi control agency that might be asking for
12 something that could get promulgated into the
13 U. S., it would be reasonable to alert the law
14 department.

15 Q. I see. You're changing your
16 testimony now; right, sir?

17 MR. SHAFFER:

18 I object.

19 A. Well, maybe I should go back and
20 read it.

21 MR. SHAFFER:

22 Wait a minute. Wait a minute. I
23 object to that.

24 MR. MICHAEL GERTLER:

25 Well, we will. We will.

1 MR. SHAFFER:

2 I object to that comment. And I
3 don't think it's a question. But be that
4 as it may, narrative comment or question,
5 I object to the form of it.

6 EXAMINATION BY MR. MICHAEL GERTLER:

7 Q. Are you saying now, sir, that you
8 didn't in your prior answer indicate that the
9 reason you selected 329 was because it may
10 involve a government outside the United States?

11 A. That was part of the answer.

12 Q. Yes, sir.

13 Now, let's look at all these
14 projects that were excluded on this list, sir.
15 A vast portion or proportion of those projects
16 dealt with cancer and the biological effects of
17 smoke; didn't they?

18 MR. SHAFFER:

19 Object to the form.

20 A. I don't see any references to
21 cancer. Maybe I'm overlooking something.

22 EXAMINATION BY MR. MICHAEL GERTLER:

23 Q. Well, let's go through them, sir.
24 And maybe it would be easier for you if you
25 continue to flip through these pages and get

1 to the summary of the excluded projects, which
2 would be at page B & W 136197.

3 A. (Witness reviews document.)

4 Q. Let's look at the first one. It
5 pertains to Number 39 or -- Let me double-check
6 that. Yes, 39. Do you see that?

7 A. Yes.

8 Q. Now, when there's a reference to
9 nitrosamines, you recognize the word
10 "nitrosamines"?

11 A. Yes.

12 Q. Do you agree, sir, that scientific
13 opinion has consistently found that nitro-
14 samines are the most abundant and strongest
15 carcinogens in tobacco smoke?

16 A. Yes, I've heard that reference.

17 Q. So when they're referring to
18 projects that deal with nitrosamines, they're
19 referring to an aspect of cigarette smoke that
20 is related to cancer; isn't that correct?

21 MR. SHAFFER:

22 Object to the form.

23 A. This project that you're referring
24 to is not about cigarette smoke. It's about --
25 It's about the formation of nitrosamines in

1 early tobacco cultivars. And I think this is
2 a crop that's in Brazil. So that must be the
3 reason that there wasn't an interest from the
4 scientists in R & D because we don't use that
5 tobacco.

6 EXAMINATION BY MR. MICHAEL GERTLER:

7 Q. Well, actually, it says nitrosamine
8 deliveries. Do you know what that means, sir?

9 A. It does cover that as well.

10 Q. What does that mean?

11 A. That would be in the smoke from
12 these tobaccos.

13 Q. Yes, sir.

14 And when they talk about nitro-
15 samines, sir, they're talking about cancer;
16 aren't they?

17 MR. SHAFFER:

18 Object to the form.

19 EXAMINATION BY MR. MICHAEL GERTLER:

20 Q. When you deliver tobacco-specific
21 nitrosamines in smoke, then you're talking
22 about , as we -- as you previously said, you're
23 talking about the most abundant and the
24 strongest cancer-causing element of smoke?

25 MR. SHAFFER:

Object to the form.

EXAMINATION BY MR. MICHAEL GERTLER:

Q. Tobacco smoke?

A. I think there's -- there is evidence, I'm not very familiar with it, of nitrosamines in certain biological systems that produce a negative result toward cancer. You know whether it's animal studies or in vitro, I don't know. But it is a compound of concern and one that would like to be minimized, if not reduced -- if not eliminated in cigarettes.

Q. Well, let me read to you, sir, from the testimony of Mr. Nicholas Brookes, who is CEO of Brown and Williamson, and tell me if you agree with his answer?

A. (Witness nods head affirmatively.)

Q. "QUESTION:" And this is at Brookes' deposition taken on 11-2-2000, Page 146, Lines 13 through 17.

"QUESTION: You accept that scientific opinion that nitrosamines are the most abundant and strongest carcinogens in smoke?"

His answer: "As I said, I've

1 testified to that. I'm sure. And that's
2 what I had been advised."

3 Do you agree with that?

4 A. I think it sounds right.

5 Q. So why is it, sir, that you wanted
6 to exclude projects that dealt with the
7 delivery of nitrosamines?

8 MR. SHAFFER:

9 Object to the form.

10 A. Any reports that ultimately would be
11 put together upon the completion of this work
12 would come to Brown and Williamson. The topic
13 at hand was do we want interim reports? And we
14 were identifying those of primary interest only
15 to receive the interim reports. The topic here
16 that you've referred me to is about burley
17 tobaccos in Brazil and, presumably, the smoke
18 from those burley tobaccos of which we don't
19 use.

20 EXAMINATION BY MR. MICHAEL GERTLER:

21 Q. Well, sir, go ahead to the next
22 project and look and see what it refers to. It
23 refers to Virginia blends. Do you use Virginia
24 blends?

25 A. (Witness reviews document.)

1 Q. Do you or don't you? Can you
2 answer?

3 MR. SHAFFER:

4 Wait just a second.

5 MR. MICHAEL GERTLER:

6 It's a very specific question.

7 MR. SHAFFER:

8 Well, you haven't given him a chance
9 to even read the paragraph.

10 MR. MICHAEL GERTLER:

11 That has nothing to do with it.
12 I've asked him if he uses Virginia blends.

13 MR. SHAFFER:

14 You're arguing with the witness.
15 And I object to the way you're treating
16 the witness.

17 EXAMINATION BY MR. MICHAEL GERTLER:

18 Q. Did B & W use Virginia blends?

19 MR. SHAFFER:

20 Let him have a chance to read the
21 entire paragraph.

22 A. (Witness reviews document.) We
23 normally do not use a blend that we would
24 characterize as a Virginia blend. That's
25 normally a United Kingdom or an English blend.

1 But we do use Virginia style tobaccos.

2 EXAMINATION BY MR. MICHAEL GERTLER:

3 Q. Now, that second project dealt with
4 the delivery of N-nitrosamines. Do you know
5 what that refers to?

6 A. Yes.

7 Q. N-nitrosamines are tobacco-specific
8 nitrosamines?

9 A. Yes.

10 Q. You weren't interested in that
11 project?

12 A. We weren't interested in a monthly
13 or frequent update. The final reports, of
14 course, would be available.

15 Q. Do you have any evidence to show
16 the jury that you ever received the reports
17 that are listed as excluded projects in this
18 particular attachment to your letter?

19 A. I don't have particular evidence
20 other than a recollection that we went through
21 the R & D library's files and there was some
22 comparison with the reports sent out by
23 Southampton. And we, as I recall, the vast
24 majority of those are -- were in and are in
25 the R & D library.

1 Q. So you don't have anything in
2 writing? You just want the jury to believe
3 you; right, sir?

4 MR. SHAFFER:

5 Object to the form.

6 EXAMINATION BY MR. MICHAEL GERTLER:

7 Q. Is that what you want?

8 A. I think the evidence -- the facts
9 will speak for them. I don't have the facts in
10 front of me.

11 Q. Yes, sir.

12 Now, look at the next project, sir.
13 It says, "Biochemical effects of mainstream
14 smoke in experimental animals." Why weren't
15 you interested in that?

16 MR. SHAFFER:

17 Object to the form.

18 A. I don't know. I don't know why that
19 determination was made.

20 EXAMINATION BY MR. MICHAEL GERTLER:

21 Q. Do you know why the determination
22 was made on any of these projects that dealt
23 with nitrosamines?

24 A. I'm only aware of, broadly, that
25 the determination was -- there was a selection

1 of any development activities that were of
2 immediate interest to the current R & D program
3 as it relates to just the interim reports only.

4 Q. You after -- Excuse me. You, in
5 the last two responses, you have unilaterally
6 decided to use the word "interim reports." Is
7 there a reference in the two letters I showed
8 you to that, that you wanted to make a further
9 discussion about, sir?

10 MR. SHAFFER:

11 Object to the form of the question.

12 A. (Witness reviews document.) I think
13 I was recalling. And it does refer to the
14 abstracts of the interested projects.

15 EXAMINATION BY MR. MICHAEL GERTLER:

16 Q. It doesn't say anything about
17 interim reports; does it?

18 A. No. Here it refers to it as
19 abstracts, as I just said.

20 Q. Yes. Abstracts are summaries of
21 the --

22 MR. SHAFFER:

23 Did you finish your answer?

24 MR. MICHAEL GERTLER:

25 I'm sorry.

1 MR. SHAFFER:

2 He was right in the middle of his
3 answer defining "abstract." And you
4 interrupted him.

5 MR. MICHAEL GERTLER:

6 I'm sorry.

7 MR. SHAFFER:

8 Let him finish his answer, please.

9 MR. MICHAEL GERTLER:

10 Yes, sir.

11 EXAMINATION BY MR. MICHAEL GERTLER:

12 Q. Go ahead. Finish your answer, sir.

13 A. I don't think I have anything else
14 that refers to it as abstracts. My recollec-
15 tion is that these were project updates, maybe
16 never referred to in any of this text as
17 interim. But project updates, not a final
18 report. That's to the best of my recollection.

19 Q. Yes, sir.

20 Now, sir, let me ask you bottom
21 line, sir, in your judgment, does smoking cause
22 lung cancer?

23 A. I think based on all the
24 epidemiological information, given the absence
25 of any direct mechanism, but in the absence of

1 any other explainable scientific reason, it
2 likely does cause lung cancer.

3 Q. That's your opinion?

4 A. That's the opinion I've formulated
5 listening to the scientists.

6 Q. When did you come to that
7 conclusion, sir?

8 A. I think I've always had a view that
9 it was a significant risk factor. And in the
10 last couple of years, our scientists have
11 reviewed this over and over. And their
12 perspective is as I said. In the absence
13 of any other cause for this higher level or
14 incidence of cancer among smokers, even without
15 a clear understanding of the mechanism, that
16 smoking is either a cause or a contributor to
17 lung cancer.

18 Q. When did you come to the conclusion
19 that smoking causes lung cancer?

20 A. No, I don't personally know. That
21 is the best view of the scientists that --

22 Q. When did you come to the conclusion
23 yourself?

24 A. -- that work for Brown and
25 Williamson, their informed view is over the

1 last couple of years they can't come up with
2 another plausible explanation. That's the view
3 that the people that are closest to the science
4 and the epidemiological information have come
5 to. I don't have any reason to disagree with
6 it.

7 Q. When did you come to the conclusion
8 yourself that smoking caused lung cancer?

9 A. The answer is I don't know if it
10 causes it or not. But the best informed --

11 Q. Sir, I didn't ask you if you knew.
12 I said did you reach a conclusion in your own
13 mind?

14 A. Well, if you don't know, you can't
15 have a conclusion; can you?

16 Q. Well, yes, you can. You can make
17 your own opinion and judgment about it. Have
18 you tried to do that?

19 A. I think it's very likely that it
20 does.

21 Q. Now, when did you come to that
22 conclusion?

23 A. I think over the last couple of
24 years. I think it's very likely that it causes
25 cancer.

1 Q. Now, what made you reach that
2 conclusion over the last couple of years
3 that you didn't hold before that?

4 A. I think I've always had a
5 perspective that it may cause cancer. I've
6 had --

7 Q. That's not the question.

8 MR. SHAFFER:

9 Well, Mr. Gertler, he hadn't
10 finished his answer.

11 MR. MICHAEL GERTLER:

12 But he's not answering the question.
13 He's not being responsive.

14 MR. SHAFFER:

15 Well, that was the first phrase of
16 the answer. If you'd let him finish his
17 answer, he'll answer it.

18 MR. MICHAEL GERTLER:

19 Well, it would be very inconsistent
20 for him to start out with "may" when the
21 question was: When did you reach the
22 conclusion that it was more likely than
23 not that it caused lung cancer?

24 MR. SHAFFER:

25 Well, why don't you let him finish

1 his answer.

2 MR. MICHAEL GERTLER:

3 I'd like a "Yes" or "No" and then an
4 explanation.

5 MR. SHAFFER:

6 You asked him for a date. You want
7 him to give you a "Yes" or "No" on a date?

8 MR. MICHAEL GERTLER:

9 No, I wanted him previously to tell
10 me "Yes" or "No." But I won't argue with
11 you. We'll talk about the date now.

12 EXAMINATION BY MR. MICHAEL GERTLER:

13 Q. Okay. Go ahead, sir. What was the
14 date you reached that conclusion that smoking
15 likely causes lung cancer?

16 A. I think for years, for many years,
17 I think it's a likelihood that smoking causes
18 cancer. The risk has been understood for
19 decades.

20 Q. Now, when you say for years you've
21 reached that conclusion, you're talking about
22 decades?

23 A. I've had some view that smoking may
24 cause cancer --

25 Q. I didn't say "may." I said when

1 did you reach the judgment --

2 MR. SHAFFER:

3 Mr. Gertler, again --

4 MR. MICHAEL GERTLER:

5 He's not answering the question.

6 MR. SHAFFER:

7 Let him finish his answer.

8 MR. MICHAEL GERTLER:

9 You want to get to the airport?

10 MR. SHAFFER:

11 Well, we'll stay here --

12 MR. MICHAEL GERTLER:

13 All right.

14 MR. SHAFFER:

15 -- until you let him have a chance
16 to finish his answer.

17 EXAMINATION BY MR. MICHAEL GERTLER:

18 Q. All right. Then just go on and --

19 Do you want to say something, sir?

20 A. What is the last question? I'm
21 sorry.

22 Q. Have you reached the conclusion
23 going back decades that smoking likely causes
24 lung cancer?

25 A. Likely, yes.

1 Q. Now, do you understand that that
2 was Brown and Williamson's position as well
3 going back decades?

4 A. Not precisely, I don't believe.

5 Q. Did they have a different opinion
6 or position on it than you did?

7 A. I think it's been known that there
8 is a high risk. And that defines some likeli-
9 hood. So I think that understanding has been
10 -- I think that's been the view of Brown and
11 Williamson for a long time.

12 Q. Well, your answer, sir, as I
13 understood it, was that you reached the
14 conclusion that it was more likely than not
15 that smoking caused lung cancer. Am I wrong
16 about how I interpreted your answer?

17 MR. SHAFFER:

18 Object to the form.

19 A. I didn't say that. I mean, what I
20 did say, we can -- I can try to repeat it or we
21 can read it.

22 EXAMINATION BY MR. MICHAEL GERTLER:

23 Q. Well, just interpret it for me so
24 we can understand it.

25 A. I think I've been very clear.

1 MR. SHAFFER:

2 Object to the form.

3 EXAMINATION BY MR. MICHAEL GERTLER:

4 Q. Well, what does "likely" mean as
5 you've just used it repeatedly?

6 A. There's a higher probability.
7 There's a risk of it causing cancer, you know,
8 based on --

9 Q. Well, which is it? A higher
10 probability or a risk?

11 MR. SHAFFER:

12 Object to the form of the question.

13 A. There is a risk established because
14 of the higher statistical evidence that came
15 from epidemiological information. So that
16 suggests there is a higher risk. And in
17 layman's terms, that means it, you know, it
18 may cause cancer. And the epidemiological
19 information is so strong that it likely does.
20 And that is the view of the scientists that
21 it does cause and/or contribute to cancer.

22 EXAMINATION BY MR. MICHAEL GERTLER:

23 Q. So you used the word "likely," you
24 used the word "does," and you used the word
25 "risk." And all that boils down to, sir, is

1 that, in your judgment, smoking causes lung
2 cancer? "Yes" or "No"?

3 A. I think it probably does.

4 Q. And that view that you have has
5 gone back decades; is that right?

6 A. No.

7 Q. How far has it gone back, sir?

8 MR. SHAFFER:

9 Mr. Gertler, quit yelling at the
10 witness.

11 MR. MICHAEL GERTLER:

12 I'm not yelling. I'm talking.

13 MR. SHAFFER:

14 You're leaning right up in his face,
15 yelling at him.

16 MR. MICHAEL GERTLER:

17 You think so?

18 MR. SHAFFER:

19 Please be courteous to the witness.

20 MR. MICHAEL GERTLER:

21 I am being courteous. If I can get
22 an answer, I'll even be more courteous.

23 MR. SHAFFER:

24 You've gotten a number of answers.

25 MR. MICHAEL GERTLER:

1 I know. And different ones.

2 EXAMINATION BY MR. MICHAEL GERTLER:

3 Q. How far does your conclusion that
4 it's more probable that smoking causes lung
5 cancer go back?

6 A. For a long time. When you say that
7 it's probable that smoking causes lung cancer,
8 that's what the statistics say.

9 Q. Now, sir, you testified in August
10 of 1999 under oath that it was your opinion
11 that it has not been proven that smoking causes
12 lung cancer. Do you remember saying that?

13 A. Yes.

14 Q. Are you changing that now?

15 A. No.

16 Q. You still don't think there's
17 sufficient proof that smoking causes lung
18 cancer; is that what you're telling the jury?

19 A. No.

20 Q. Well, which is it?

21 A. Well, --

22 Q. Is there or isn't there enough
23 proof that smoking causes lung cancer?

24 A. It's a judgment. And I think the
25 judgment, best informed judgment is that it

1 does cause cancer, lung cancer.

2 Q. All right. So what you said in
3 1999 just isn't true today; is it?

4 A. On the basis that I made that
5 answer, if your assumption -- if your
6 definition of "cause" requires the under-
7 standing of a mechanism, it's still not there.
8 But in spite of that, I think the scientists --
9 I know the scientists at Brown and Williamson
10 believe that there's no other plausible
11 explanation that it does cause cancer. That's
12 very clear.

13 Q. Very clear to who, sir? To you?

14 A. Yes.

15 Q. To your knowledge, has it been
16 proven, based on the epidemiology and all of
17 the evidence present today, that cigarette
18 smoking causes lung cancer?

19 A. I think that is the judgment that
20 the scientists have come to. That based on all
21 the information, which is what your question
22 was, including the epidemiology, including the
23 absence of other plausible explanations,
24 including the high risk factor that, yes, it
25 does cause cancer.

1 Q. So when you said in 1999 under
2 oath that it's not been proven that cigarette
3 smoking causes lung cancer, that wasn't
4 accurate; was it?

5 A. I think it was accurate in that
6 point in time. I think in light of what I'm
7 saying now, the view, the judgment of the
8 scientists has moved on. That doesn't make it
9 inaccurate. It was, I think, the most accurate
10 I could say it in that period of time.

11 Q. Sir, in your opinion, does smoking
12 cause chronic obstructive pulmonary diseases?

13 A. I'm not sure of the statistics on
14 it. I think, again, there's a lot of epidemio-
15 logical information that says it's high risk.
16 And it may, in fact, cause the obstructive
17 problems in the lungs.

18 Q. Do you have an opinion, sir, about
19 whether smoking causes chronic obstructive
20 pulmonary disease?

21 A. No, I don't know. It seems very
22 likely in some people that it does.

23 Q. Do you know what Brown and
24 Williamson's position is on that?

25 A. No, I'm not certain. I believe

1 there's -- the evidence will -- I mean, the
2 website and the scientists can speak for
3 exactly which diseases there's enough risk
4 factors associated to come to the same
5 conclusion that cause exists. But I can't
6 go through all the list with certainty.

7 Q Well, sir, let me read to you what
8 your CEO said about that on 11-2-2000 at Page
9 201 at Lines 123 to 125 and Page 202, Lines 1
10 through 25.

11 MR. SHAFFER:

12 Do you have a copy of that to show
13 him?

14 MR. MICHAEL GERTLER:

15 I do.

16 MR. SHAFFER:

17 Yeah, we'd like -- I'd like for you
18 to let him take a look at it.

19 MR. MICHAEL GERTLER:

20 All right.

21 MR. SHAFFER:

22 What were the pages?

23 MR. MICHAEL GERTLER:

24 I'm now at Page 201. And I believe
25 it's at Lines 23 to 25.

1 MR. SHAFFER:

2 That's a question?

3 EXAMINATION BY MR. MICHAEL GERTLER:

4 Q. I think the question I'm looking
5 for that's posed to the CEO was:

6 "Does, in your opinion, your opinion
7 smoking cause chronic obstructive
8 pulmonary disease?"

9 And his answer was: "I think the
10 evidence on that is very strong. I think
11 probably the best judgment is that it
12 does."

13 Do you see that?

14 A. Yes, I do.

15 Q. Now, do you agree now with what the
16 CEO said in his sworn testimony?

17 A. I don't have an independent view.
18 I have no reason to think he wasn't well-
19 informed with the scientists' view when he
20 said that, so I think he must be accurate.

21 Q. Okay. So is it fair to say, sir --
22 Let's see. You retired when did you say? In
23 the year 2000, huh?

24 A. Yes.

25 Q. Up to that point, you had not

1 reached an opinion about whether smoking causes
2 pulmonary obstructive lung disease; correct?

3 A. No, I was very aware of the risks
4 but I hadn't formulated that view.

5 Q. Now, in your opinion, sir, does
6 smoking cause emphysema?

7 A. Again, I don't have an independent
8 view. I know that it's always been a risk
9 factor and it likely does for some people,
10 but --

11 Q. Well, you know what's strange? In
12 1999, if you want that testimony, you said --
13 it's August the 4th, 1999 at Page 61, Lines 9
14 through 24 of your sworn statement, here's the
15 question and answer.

16 Question to you, sir --

17 MR. SHAFFER:

18 Do you have a copy of that, Mr.
19 Gertler --

20 MR. MICHAEL GERTLER:

21 Yes.

22 MR. SHAFFER:

23 -- so we can take a look at it?

24 MR. MICHAEL GERTLER:

25 Yes, sir.

1 MR. SHAFFER:

2 And I object to the form of your
3 narrative commentary that it's strange.

4 (Whereupon a discussion was held off
5 the record.)

6 MR. SHAFFER:

7 What page did you say?

8 EXAMINATION BY MR. MICHAEL GERTLER:

9 Q. I'm reading from Page 61, Lines 9
10 through 24, where it says that:

11 "QUESTION: To your knowledge, has
12 it been proven that cigarette smoking
13 causes disease?"

14 And your answer was: "No. To the
15 best of my knowledge, I'm not aware of any
16 disease that the mechanism and the cause
17 is associated with cigarette smoking."

18 "QUESTION: My question didn't
19 mention mechanism. If you want to
20 clarify, feel free to do that. All I'm
21 asking is, to your knowledge, it has not
22 been proven that cigarette smoking causes
23 any disease; is that correct?"

24 Your answer: "To the best of my
25 knowledge, cigarette smoking has not been

1 proven to cause any disease."

2 Did you testify to that, sir, in
3 1998, under oath?

4 A. Yes, under this definition that I
5 had in mind regarding the need for an
6 understanding of the mechanism, I did. That
7 was the definition I was operating under.

8 Q. Yes, sir.

9 But the question was it didn't --
10 he didn't mention mechanism. Do you see that?

11 A. But causes disease requires a
12 definition, that's all I'm saying. That the
13 definition I was operating under required,
14 that I heard from our scientists, required an
15 understanding of the mechanism of disease. And
16 that was the basis for that answer.

17 Q. So when you testified under oath,
18 I quote your answer, "To the best of my
19 knowledge, cigarette smoking has not been
20 proven to cause any disease," you were thinking
21 in your mind a definition that you didn't
22 explain at the deposition; isn't that correct,
23 sir?

24 MR. SHAFFER:

25 Object to the form.

1 A. Well, I think I did talk about
2 several times what was required to establish
3 cause.

4 EXAMINATION BY MR. MICHAEL GERTLER:

5 Q. Well, as you sit here today under
6 oath, sir, I'm going to ask you the same
7 question. My question doesn't pertain to
8 mechanism. If you want to clarify, feel
9 free to do so. All I'm asking is, to your
10 knowledge, has it been proven that cigarette
11 smoking causes any disease?

12 A. Yes.

13 Q. Which diseases, sir?

14 A. I'm only certain that lung cancer.
15 But I see from the testimony of Mr. Brookes
16 that chronic respiratory blockages also is
17 caused by cigarette smoking based on, I assume,
18 the best input from our scientists. So I can't
19 go through the list.

20 Q. Now, the reason that you're not
21 willing while you were at B & W to admit that
22 smoking causes any disease, sir, was because
23 of these lawsuits; isn't that correct?

24 MR. SHAFFER:

25 Object to the form.

1 A. I was trying to answer the questions
2 honestly and with the input that I had.

3 EXAMINATION BY MR. MICHAEL GERTLER:

4 Q. Now, let me show you a document,
5 sir. Let's see. This is "Scott Exhibit 2171."
6 And ask you if you recognize this document? I
7 think you were the author of the document;
8 weren't you, sir?

9 A. (Witness reviews document.) Yes.

10 Q. Is that your signature?

11 A. (Witness reviews signature.) Yes,
12 it is.

13 Q. And you wrote this letter; correct?

14 A. (Witness nods head affirmatively.)
15 I believe that's correct, yes.

16 Q. And you wrote it to Mr. J. A. B.
17 Kellagher, to British-American Tobacco,
18 Limited; correct?

19 A. Yes.

20 Q. And you called him Alan; correct?

21 A. Yes.

22 Q. And in your letter in the last
23 paragraph on the first page, you say the
24 following, quote, "Within B & W, we have rarely
25 attempted to develop new products specifically

1 designed to deliver low carbon monoxide." It
2 says CO; correct? That's what it says? CO?
3 Are you reading on?

4 A. No, I'm sorry, I don't see that --
5 This is the last paragraph?

6 Q. The first page, sir.

7 A. Oh, the first page. That's why I
8 don't see it.

9 Q. Now, let me start again. Does CO
10 refer to carbon monoxide?

11 A. Yes.

12 Q. So let me read it, sir. It says,
13 "Within B & W, we have rarely attempted to
14 develop new products specifically designed to
15 deliver low carbon monoxide except perhaps a
16 prototype of Fact that was kept ready on a
17 turnkey basis in the event of a marketing need
18 for such product."

19 Now, you wrote that; didn't you,
20 sir?

21 A. Yes.

22 Q. Now, you actually had ready to be
23 marketed a product with reduced carbon
24 monoxide; isn't that correct?

25 A. It was a product, an improvement on

1 Fact that reduced to some extent the level of
2 carbon monoxide.

3 Q. And carbon monoxide is considered
4 to be one of the hazardous components of
5 cigarette smoke; correct?

6 MR. SHAFFER:

7 Object to the form.

8 A. CO is undesirable.

9 EXAMINATION BY MR. MICHAEL GERTLER:

10 Q. Yes, sir.

11 But you didn't market that product,
12 sir, did you? Did you, sir?

13 MR. SHAFFER:

14 Mr. Gertler, would you please keep
15 your voice down and stop yelling at the
16 witness.

17 A. I need to put this in context
18 because -- And so I need to read it a little
19 bit because I can tell you that --

20 EXAMINATION BY MR. MICHAEL GERTLER:

21 Q. Well, can you answer the question
22 I just posed? Did you ever market the product
23 that's referred to in this letter as Fact with
24 reduced carbon monoxide?

25 A. I'm not certain. We may have.

1 That's the reason I wanted to just read it and
2 see what is in it. We also reduced the carbon
3 monoxide of all of our blends with SDS, which
4 we developed. So we took carbon monoxide of
5 our products right across the board down.

6 Q. You did?

7 A. That's correct.

8 Q. So you never marketed the Fact
9 product, did you?

10 A. I think I just told you I need to
11 refresh the -- understand the context of this.
12 But I can tell you that we did have research to
13 look at the possibilities of reducing CO. And
14 we, in fact, developed a technology, shredded
15 stem, that reduced it in all of our products.

16 Q. Well, let's read the last paragraph
17 of this letter together then, sir, and let's
18 see what was going on at B & W at the time.
19 It says, "Beyond these plans, the emphasis at
20 B & W is on product amelioration. The major
21 part of our resources is devoted to understand-
22 ing what contributes to the harshness of
23 cigarette smoke.

24 "Improvement of our products to
25 achieve superiority over competitive products

1 is a more pressing need. Therefore, I do not
2 see involving ourselves in designing products
3 with the limited objective of reducing carbon
4 monoxide in the near future unless marketing
5 needs dictate otherwise."

6 That was your statement; correct,
7 sir?

8 MR. SHAFFER:

9 Object to the form.

10 EXAMINATION BY MR. MICHAEL GERTLER:

11 Q. Did I read it accurately?

12 A. Yes, you read it accurately.

13 Q. And you were the one who wrote it;
14 correct?

15 A. Right. Of course, that follows
16 where I've just covered, that we are putting
17 SDS that will reduce the carbon monoxide by 10
18 percent.

19 Q. Yes, sir.

20 But you didn't in this letter
21 specifically say that you weren't going to
22 market that Fact product with the reduced
23 carbon monoxide -- Strike that. I'm going
24 to rephrase that question.

25 You were saying in this last

1 paragraph, didn't you, sir, that you weren't
2 about to put an emphasis on marketing that Fact
3 product; correct?

4 MR. SHAFFER:

5 Object to the form.

6 EXAMINATION BY MR. MICHAEL GERTLER:

7 Q. That's the essence of what this
8 says; isn't it, sir?

9 MR. SHAFFER:

10 Object to the form.

11 A. No, I don't think so. Fact was an
12 experimental -- It was a new product. We put
13 it out. It's not R & D's -- You know, R & D
14 is responsive to changing the product over a
15 period of time. The product was just newly put
16 out. It had all sorts of gas phase reduction,
17 which was the basis of it. This product was
18 designed to produce a low gas phase.

19 EXAMINATION BY MR. MICHAEL GERTLER:

20 Q. Let's see. You say here, "I do not
21 see involving ourselves in designing products
22 with the limited objective of reducing carbon
23 monoxide." You say that; don't you, sir?

24 A. Yes. The work goes on at
25 Southampton but we weren't getting involved

1 with it at that stage.

2 Q. I see.

3 So you had the option to get
4 involved in it, but you decided that that's not
5 where you were putting your emphasis at Brown
6 and Williamson; right?

7 A. Obviously, at this moment, we had
8 already made significant reductions in our CO.
9 They had activities going on. And we weren't
10 getting involved at that stage.

11 Q. Now, did you significantly reduce
12 the carbon monoxide in Kool filter regular
13 cigarettes? Excuse me. Did you significantly
14 reduce the carbon monoxide in Kool filter full-
15 flavored cigarettes?

16 A. I think so, yes.

17 Q. What did you reduce the carbon
18 monoxide from and what did you reduce it to?

19 A. I don't know the numbers. All I
20 can refer to is, you know, from this almost
21 20-year-old document that the CO was reduced by
22 10 percent where we used the SDS.. And to the
23 best of my recollection, that was implemented
24 in all the products over a period of time as we
25 had capacity to manufacture it.

1 Q. Now, if you would have actually
2 marketed the Fact product, how much lower would
3 the CO have been reduced below the SDS level?

4 MR. SHAFFER:

5 Object to the form.

6 A. I don't know.

7 EXAMINATION BY MR. MICHAEL GERTLER:

8 Q. But it would have --

9 A. I think the basis for reduction
10 would have been to lower the tar delivery of
11 the product. As you'd lower tar delivery,
12 you get less CO. So I'm unaware of any other
13 technology to reduce CO other than SDS. So
14 the reduction would be generally proportional
15 to tar delivery, which would --

16 Q. All right. So is it fair for me
17 to conclude that you didn't market the Fact
18 product because you were reducing the carbon
19 monoxide levels in all of your brands to the
20 same level that would have been included in
21 Fact?

22 A. I don't think that's accurate the
23 way you stated it. We were introducing SDS
24 which reduced the carbon monoxide delivery.
25 The only other method that I'm aware of is to

1 reduce the tar delivery. And we had a range of
2 products of tars that people could select.

3
4
5 * * * * *

6
7 (Page 263, Line 3 through Page 277,
8 line 12 was placed under seal.)
9

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EXAMINATION BY MR. MICHAEL GERTLER:

Q. Have you ever heard of the product
Advance?

A. Yes.

Q. Does that have reduced
nitrosamines?

A. Yes.

Q. Now, is that a product of Brown and
Williamson?

A. Brown and Williamson manufactures
that product for Star Tobacco.

Q. Now, has Brown and Williamson ever
used the means of reducing nitrosamines in

1 their product brands?

2 A. We are -- Brown and Williamson
3 doesn't have the quantities of tobacco; but it
4 has been rapidly purchased and investments are
5 being made to secure adequate production to use
6 low nitrosamine tobaccos in other brands, yes.

7 Q. Now, sir, let's clarify that.

8 A. Yes, sir.

9 Q. This Advance product was test
10 marketed by a company called Star Scientific
11 in 19 -- in the year 2000; wasn't it, sir?

12 A. I think that's right. Totally
13 with the collaborative effort with Brown and
14 Williamson.

15 Q. Yes, sir.

16 But Brown and Williamson up to this
17 date of this deposition, to your knowledge, has
18 never used that mechanism to reduce any
19 nitrosamines in their brands; have they?

20 "Yes" or "No"?

21 A. Not yet. There's not enough
22 tobacco.

23 Q. All right. Now, let me ask you,
24 sir, about the Barclay product. We had talked
25 about that previously. And I had given you

1 some -- asked you some questions about the
2 level of nicotine in Barclay as compared to
3 the full-flavored brands. And I showed you a
4 document dated January 20th, 1981.

5 Do you still have that in front of
6 you?

7 A. I do. (Witness reviews document.)

8 Q. Have you reviewed that document
9 with reference to the tables that pertain to
10 the level of pH and nicotine in Barclay?

11 A. Is that Table 1 you're referring
12 to?

13 Q. That's the first one, yes.

14 A. Thank you. (Witness reviews
15 document.)

16 MR. SHAFFER:

17 Do you have another copy of that
18 January 20 document?

19 (Whereupon a discussion was held off
20 the record.)

21 THE WITNESS:

22 I see the table.

23 EXAMINATION BY MR. MICHAEL GERTLER:

24 Q. Is it correct that on that Table 1,
25 it shows that Barclay delivers more extractable

1 nicotine than does the full-flavored product
2 referred to as Viceroy?

3 A. I'm not familiar with this at all,
4 so I wasn't involved in these -- in this
5 period. I think this is --

6 MR. SHAFFER:

7 Well, don't guess or speculate.

8 EXAMINATION BY MR. MICHAEL GERTLER:

9 Q. You weren't involved at all in the
10 development of Barclay?

11 A. Not regarding the chemistry or
12 anything. I was -- In 1981, I was involved
13 with plant design.

14 Q. When did you become involved with
15 Barclay?

16 A. Perhaps in 1983 or thereabouts, to
17 the best of my --

18 Q. Now, in what context did you become
19 involved with Barclay?

20 A. Involved with the machinery to
21 produce the filters.

22 Q. Were you aware at that time that
23 Barclay had 25 percent more free nicotine in
24 their Barclay 85 millimeter brand and 15
25 percent more in the Barclay 100s than did your

1 full-flavored Viceroy?

2 MR. SHAFFER:

3 Object to the form.

4 A. This talks about extractable
5 nicotine. Is that where you're referring to?

6 EXAMINATION BY MR. MICHAEL GERTLER:

7 Q. Yes, sir.

8 A. So I was not aware of this data.
9 But it is whatever it says.

10 Q. Do you see the pH level that's
11 referred to in that table for the Barclay
12 cigarette?

13 MR. SHAFFER:

14 Could I get a copy of this document?

15 MR. MICHAEL GERTLER:

16 I'm sorry.

17 MR. SHAFFER:

18 Here again, I don't have a copy and
19 it's hard for me to follow.

20 MR. MICHAEL GERTLER:

21 Okay.

22 MR. SHAFFER:

23 Do you have the entire document?

24 MR. MICHAEL GERTLER:

25 Yes, sir.

1 EXAMINATION BY MR. MICHAEL GERTLER:

2 Q. What is the pH level reported for
3 the Barclay cigarette?

4 A. There's two reported here. For
5 Barclay 85, it's 6.84. For Barclay 100, it
6 says 6.76.

7 Q. Do you recognize those as being
8 high levels of pH compared to your other
9 cigarettes?

10 MR. SHAFFER:

11 Object to the form.

12 A. I'm not familiar with the range of
13 pH. The data here puts it in the middle of the
14 range of Viceroy and Cambridge, so I --
15 Cambridge is another low tar cigarette, so it's
16 actually lower than Cambridge 85 and about the
17 same as Cambridge 100.

18 EXAMINATION BY MR. MICHAEL GERTLER:

19 Q. So the Barclay product, you say,
20 the pH is about the same as the Cambridge 100?

21 A. Well, as I said, the Barclay 85 has
22 a lower pH. And the 100s is almost identical.

23 Q. And how about compared to the
24 Viceroy product, sir?

25 A. It's a higher pH for the --

1 Q. In the Barclay?

2 A. -- for Barclay is higher than
3 Viceroy 84.

4 Q. Were you aware of that when you
5 were employed at Brown and Williamson?

6 MR. SHAFFER:

7 Object to the form.

8 A. I don't -- I don't remember any
9 great discussion about pH of these particular
10 products.

11 EXAMINATION BY MR. MICHAEL GERTLER:

12 Q. Do you know how B & W got the pH
13 up to the level that's reported in that table?

14 MR. SHAFFER:

15 You're talking about 1981?

16 EXAMINATION BY MR. MICHAEL GERTLER:

17 Q. Whatever level is reported in that
18 table. I think that's about when the product
19 came out; didn't it?

20 A. I don't recall. But that's
21 probably -- The pH matches, as I said, pretty
22 close to the Cambridge product. I don't see
23 what do you mean by getting it up?

24 Q. Up above the Viceroy product, which
25 is the full-flavored regular brand; isn't it?

1 A. I'm not an expert here --

2 MR. SHAFFER:

3 Object to the form.

4 THE WITNESS:

5 -- but I think when you go to
6 higher ventilations, you get higher pH
7 measurements. These match up very much
8 with other equal tar delivery products,
9 the way I'm viewing the data.

10 EXAMINATION BY MR. MICHAEL GERTLER:

11 Q. I see.

12 So is it your opinion that's how
13 they got the pH level up on the low tar
14 products ~~has~~ by means of ventilation?

15 MR. SHAFFER:

16 Object to the form.

17 A. I don't know this area very well.

18 There was no --

19 MR. MICHAEL GERTLER:

20 All right.

21 MR. SHAFFER:

22 Well, let me instruct you not to
23 guess or speculate. If you know the
24 answer, please answer it. But don't
25 guess and don't speculate.

1 THE WITNESS:

2 Well, I'm unaware of any effort to
3 get the pH up, I guess, is the answer.

4 EXAMINATION BY MR. MICHAEL GERTLER:

5 Q. Was the ventilation in the Barclay
6 filters the same as in the other B & W light
7 products?

8 A. No, it was a different design.

9 Q. It was a different design?

10 A. Yes.

11 Q. Did the Kool light and ultra light
12 products have the same design?

13 A. I believe the Kool ultra does. I
14 don't think the Kool light does.

15 Q. Now, does the other B & W ultra
16 light products have the same design?

17 A. As Barclay?

18 Q. As Barclay.

19 MR. SHAFFER:

20 Are you talking about now, Mr.
21 Gertler, or 1981?

22 EXAMINATION BY MR. MICHAEL GERTLER:

23 Q. Whenever they were manufactured.

24 I think we were covering a period
25 of time -- and I have that information but I

1 don't want to have to spend the time to go back
2 -- but there was a course of time when Brown
3 and Williamson started to market ultra light
4 products beginning in 1981; is that correct?

5 A. I'm not that familiar. But that's
6 approximately the time frame, it would seem.
7 I just don't recall.

8 Q. And then after that and between
9 today, there have been a number of different
10 ultra light products marketed by B & W; is that
11 correct?

12 A. There are a few.

13 Q. Yes, sir.

14 And all of those ultra light
15 products use the same filter design as Barclay;
16 isn't that correct?

17 A. No, I don't believe that's true.

18 Q. Well, the Kool ultra light does?

19 A. I think that's true.

20 Q. Does the Belair have an ultra light
21 product?

22 A. I don't believe so.

23 Q. What other brand has an ultra light
24 product?

25 A. To the best of my recollection,

1 Barclay does.

2 Q. Yes.

3 A. And -- That's all I can recall
4 right now is the GPC.

5 Q. Were you aware of the allegation
6 that consumers who were smoking the Barclay
7 product were inadvertently covering or blocking
8 the ventilation holes, thereby causing more tar
9 and nicotine to be delivered to the smoker than
10 reported on the smoking machines?

11 A. Yes, I'm aware of some concern
12 regarding blockage of the channel ventilation,
13 maybe also the ventilation holes, but I don't
14 remember that.

15 Q. Now, where was the ventilation
16 channels?

17 A. They're at the mouthpiece.

18 Q. At the mouthpiece.

19 Were there also ventilation
20 channels at the mouthpiece of the Kool ultra
21 light product?

22 A. Yes.

23 Q. Now, after the -- Well, did you
24 have anything to do with the FTC investigation
25 of that partial blocking of those holes?

1 A. Only as it related to making some
2 equipment to respond to some of the changes in
3 the product that were made.

4 Q. Do you know what Project Sinus is,
5 refers to?

6 A. Project -- I'm sorry?

7 Q. S-I-N-U-S.

8 A. No, I don't believe so.

9 Q. Were you aware of any project at
10 B & W to investigate this problem of consumers
11 inadvertently blocking the ventilation holes in
12 the Barclay product?

13 A. The question was was I aware of it?

14 Q. Uh-huh (indicating affirmatively).

15 A. I mean, I certainly heard bits and
16 pieces. I was not directly involved with that.

17 Q. Do you know what B & W did to
18 correct that problem, if anything?

19 A. Yes.

20 Q. What?

21 A. I'm not sure I know in total. One,
22 there was an agreement reached with the FTC to
23 change the advertising and the tar delivery on
24 the packs. And the design of the product was
25 changed somewhat, which I can't recall.

1 Q. Now, the FTC required the numbers
2 reported on the pack for Barclay to be
3 increased; correct?

4 MR. SHAFFER:

5 Object to the form.

6 A. I think the -- that's correct. They
7 allowed the 99 percent tar free. And the agree-
8 ment was that it was maybe a three milligram
9 instead of one. I don't recall for sure, but I
10 think that was it.

11 EXAMINATION BY MR. MICHAEL GERTLER:

12 Q. Whatever it was, it was higher than
13 what originally Barclay packs reported to the
14 consumers; correct?

15 A. Yes.

16 Q. Now, what about the design? When
17 did the design change on the Barclay filter or
18 channel ventilation?

19 A. I don't remember the year.

20 Q. Are you certain that that design
21 was changed?

22 A. I believe so. But certain, no.

23 Q. Would the CEO of the company have
24 known if the design was changed on the Barclay
25 product?

1 A. The CEO at that time?

2 Q. Yes.

3 A. Yes.

4 Q. Mr. Brookes?

5 A. Oh, he was not the CEO at that
6 time.

7 Q. Well, when he became CEO, would he
8 have been aware of that?

9 A. Well, I don't know if he made
10 himself aware of it. It would have been a
11 historical incident, not current for his
12 tenure.

13 Q. So you're aware of when the design
14 change was made? That's what I asked you.
15 When was the design change made?

16 A. And I said I don't remember the
17 year.

18 Q. Well, if you don't remember the
19 year, how do you know who was CEO?

20 A. Well, because it was sometime in
21 the, best guess, sometime in the eighties. But
22 I don't know precisely. But sometime in the
23 early eighties, I should say.

24 Q. So you're guessing?

25 A. Yes. That's just a -- You know,

1 it's in that time period. I don't know.

2 MR. MICHAEL GERTLER:

3 Let's take a brief recess. I might
4 be finished.

5 MR. SHAFFER:

6 Okay.

7 THE VIDEOGRAPHER:

8 Going off the record at 4:40.

9 (Whereupon a brief recess was taken
10 at this time from 4:40 o'clock p.m. to
11 4:54 o'clock p.m.)

12 THE VIDEOGRAPHER:

13 We're back on the record at 4:54.

14 EXAMINATION BY MR. MICHAEL GERTLER:

15 Q. Sir, I've presented you now with
16 another document. It's Exhibit -- Excuse me,
17 sir. It's "Scott Exhibit Number 3502." And
18 I ask you if you recognize that document? If
19 so, tell me what it is.

20 A. (Witness reviews document.) I
21 recognize it. I don't remember it very well,
22 but it's, just scanning here, it's some of the
23 views from --

24 MR. SHAFFER:

25 Do you have a copy for me?

1 MR. MICHAEL GERTLER:

2 I thought I slid one over. I don't
3 see it, Charlie.

4 MR. SHAFFER:

5 All right.

6 MR. MICHAEL GERTLER:

7 I don't even have a copy. I'm just
8 asking him to identify it. I'm not going
9 to go into any of the language in the
10 document.

11 THE WITNESS:

12 It was a document -- I recall it
13 briefly.

14 EXAMINATION BY MR. MICHAEL GERTLER:

15 Q. It's a Brown and Williamson
16 document?

17 A. It's a document from Brown and
18 Williamson. It's from Bob Sanford, who was
19 leaving in retirement about this time, sending
20 some thoughts to me. And he copied Tommy
21 Sandefur.

22 MR. SHAFFER:

23 May I look at the document?

24 MR. MICHAEL GERTLER:

25 Yes. Absolutely.

1 MR. SHAFFER:

2 I just have not had a chance to look
3 at it. You don't have another copy
4 anywhere?

5 MR. MICHAEL GERTLER:

6 I don't see it right now.

7 (Whereupon a discussion was held off
8 the record.)

9 EXAMINATION BY MR. MICHAEL GERTLER:

10 Q. Okay, sir. So just for further
11 clarification, that's an authentic Brown and
12 Williamson document; is that correct?

13 A. It was a document. This is a copy
14 of it, obviously.

15 Q. I mean a copy of an authentic
16 document.

17 A. Yes.

18 Q. Okay, sir. And does it indicate
19 that you received that document?

20 A. This looks like the copy that was
21 sent to Tommy Sandefur, not me. It has his
22 stamp on it. He says -- He then sent it to me
23 and said, "Let's discuss." So I assume I saw
24 my copy and this based on the writing.

25 Q. All right, sir. Thank you.

1 Now, let me show you another
2 document. This is "Exhibit Number 2467."

3 I do have a copy of that, Charlie.

4 A. (Witness reviews document.)

5 Q. Do you recognize that document?

6 A. I don't believe so.

7 Q. Can you recognize it as an official
8 document of the company?

9 MR. SHAFFER:

10 Object to the form of the question.
11 There's no indication this is a Brown and
12 Williamson document. I object to the
13 form.

14 EXAMINATION BY MR. MICHAEL GERTLER:

15 Q. Well, since you didn't work there
16 and he did, I was just wondering if he could
17 recognize it as an official document of the
18 company?

19 A. I don't believe this is a Brown and
20 Williamson document.

21 Q. Is this a British-American Tobacco
22 Company document?

23 A. I really don't know because I
24 haven't seen it. I see a stamp down here. I
25 don't know if this is a stamp or part of the

1 document.

2 Q. All right. Do you recognize the
3 author of the document?

4 A. No, sir, I don't. I looked for
5 that.

6 Q. All right, sir. Thank you.
7 By the way, I had previously
8 misspelled that project. It's actually spelled
9 S-I-N-O-S that refers to the Barclay product
10 and the blocking of the ventilation holes. And
11 I'm presenting it now before you.

12 Have you seen it before, the
13 document that is presently in front of you?

14 A. (Witness reviews document.)

15 MR. SHAFFER:

16 Now, what document is that?

17 MR. MICHAEL GERTLER:

18 That's that Sinos Project that he
19 previously said he was unaware of. And
20 I just found the actual document, and I
21 wanted him to have the benefit of seeing
22 it.

23 MR. SHAFFER:

24 Well, you haven't introduced this
25 document?

1 MR. MICHAEL GERTLER:

2 No, sir.

3 MR. SHAFFER:

4 You haven't shown him this document
5 before?

6 MR. MICHAEL GERTLER:

7 No, sir.

8 MR. SHAFFER:

9 Well, do you have a copy that I can
10 look at?

11 MR. MICHAEL GERTLER:

12 I think I did give you -- Didn't I
13 give you a copy to look at before?

14 MR. SHAFFER:

15 I don't think so.

16 (Whereupon a discussion was held off
17 the record.)

18 THE WITNESS:

19 I don't recall ever seeing this
20 document.

21 EXAMINATION BY MR. MICHAEL GERTLER:

22 Q. You recognize it as a Brown and
23 Williamson document?

24 A. No, it's not.

25 Q. Where does it originate from? What

1 company? Can you tell from that document?

2 A. I believe so. It's got R. P.
3 Ferris. He's either part of Southampton or BAT
4 Co.

5 Q. Southampton or BAT Co.

6 Okay. Thank you, sir. Let me just
7 identify for the record. I don't see a Scott
8 Exhibit Number on it, so it is a July 15, 1983
9 report of Project S-I-N-O-S. And identified by
10 Bates number 501023740 through 501023746 with a
11 notation that it was produced from the B & W
12 website.

13 All right, sir. Lastly, I'm not
14 sure if I had you identify this document. But
15 let me ask you if you have previously seen this
16 document?

17 A. (Witness reviews document.)

18 MR. MICHAEL GERTLER:

19 Charlie, I don't know if I have
20 another copy.

21 (Whereupon a discussion was held off
22 the record.)

23 MR. SHAFFER:

24 Now, have you identified this for
25 the record?

1 MR. MICHAEL GERTLER;

2 It's what? "Exhibit Number 2300";
3 is that it? This is "Scott Plaintiffs"
4 Exhibit Number 2300."

5 (Whereupon a discussion was held off
6 the record.)

7 EXAMINATION BY MR. MICHAEL GERTLER:

8 Q. Do you recognize that, sir?

9 MR. SHAFFER:

10 Whose mark is that down there?
11 There are a lot of words and numbers and
12 so forth at the bottom right-hand corner.

13 MR. MICHAEL GERTLER:

14 I don't know what mark you're
15 referring to.

16 MR. SHAFFER:

17 "Exhibit 2300."

18 MR. MICHAEL GERTLER:

19 That's the --

20 MR. SHAFFER:

21 Is that the plaintiffs' stamp?

22 MR. MICHAEL GERTLER:

23 Yes.

24 MR. SHAFFER:

25 "Exhibit 2300"?

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MR. MICHAEL GERTLER:

Yes.

MR. SHAFFER:

B & W is the stamp the plaintiff put on the document?

MR. MICHAEL GERTLER:

Yes. That's to identify it by the Scott Exhibit Number, which I understand all documents need to be identified by.

MR. SHAFFER:

And so what is the question?

MR. MICHAEL GERTLER:

Does he recognize the document?

THE WITNESS:

I don't remember the document.

EXAMINATION BY MR. MICHAEL GERTLER:

Q. You don't remember seeing that document before today?

A. No. No, right now I don't remember it.

Q. Who's R. R. Baker?

A. He's one of the scientists at R & D Southampton.

Q. At Southampton?

A. Correct.

1 MR. MICHAEL GERTLER:

2 Okay, sir. I have no further
3 questions. Thank you.

4 EXAMINATION BY MR. SHAFFER:

5 Q. Just a few questions, Mike.

6 Mr. Kohnhorst, B & W has recently
7 published its judgment about causation on its
8 website; hasn't it?

9 A. Yes.

10 Q. And do you agree with B & W's
11 judgment about cigarette smoking and causation
12 as stated on its website?

13 A. Yes, I don't have any reason to
14 disagree with that.

15 Q. Okay. And, Mr. Kohnhorst, in your
16 -- Strike that. You're not a medical doctor
17 who specializes in the analysis of medical
18 causation; are you?

19 A. No, I'm not any kind of doctor.

20 Q. All right. And do you distinguish,
21 Mr. Kohnhorst, between the subject of a risk
22 factor and the subject of causation?

23 A. Yes, sir, there's a difference.

24 Q. And explain in your terms what the
25 difference is between a risk and between

1 causation.

2 A. Well, risk is established from
3 statistics. In the case of the topic at hand,
4 it's epidemiological information that
5 establishes a risk. Causation is a judgment
6 that one comes to when you put -- look at all
7 the information available.

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12 (Page 301, Line 8 through Page 302,
13 Line 4 was placed under seal.)
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MR. MICHAEL GERTLER:

Object to the question.

EXAMINATION BY MR. SHAFFER:

Q. Now, this document that Mr. Gertler gave you just a few minutes ago, this "Scott Exhibit 3502," and this is a June 28, 1985 document. Do you see that?

A. Yes.

Q. I believe you testified earlier that you assumed that you received that document. Do you know for certain that you got it?

MR. MICHAEL GERTLER:

Object to the form of the question.

EXAMINATION BY MR. SHAFFER:

Q. Do you know for sure whether you got it or are you just assuming?

MR. MICHAEL GERTLER:

Object to the form of the question.

A. I don't have an independent recollection of receiving it. But it was

1 addressed to me, I do remember seeing this
2 other copy. So my best judgment is I saw it,
3 I saw the copy when it was sent out.

4 MR. SHAFFER:

5 Thank you. That's all I have.

6 RE-EXAMINATION BY MR. MICHAEL GERTLER:

7 Q. Mr. Kohnhorst, have you during the
8 course of this deposition had any discussions
9 with any attorney about answers to any
10 questions that you would be asked?

11 MR. SHAFFER:

12 Well, if you're talking about me,
13 that would be privileged.

14 MR. MICHAEL GERTLER:

15 Well, I am talking about any
16 attorney. But I'm only talking about
17 questions and answers after the deposition
18 began.

19 EXAMINATION BY MR. MICHAEL GERTLER:

20 Q. Were you told by any attorney after
21 the deposition began that he would ask you
22 questions and you discussed with him what
23 answers you would give?

24 MR. SHAFFER:

25 That's privileged. Any discussion

1 I may have had, if that's what you're
2 talking about, is privileged.

3 MR. MICHAEL GERTLER:

4 Well, I am talking about that. And
5 I don't think it's privileged because I
6 don't think that you represent him. I
7 think you represented that you represent
8 Brown and Williamson when we started the
9 deposition.

10 MR. SHAFFER:

11 And we also represent Mr. Kohnhorst.

12 MR. MICHAEL GERTLER:

13 Well, that's new. You didn't say
14 that when you first identified yourself in
15 this deposition.

16 Are you instructing him not to
17 answer the question?

18 MR. SHAFFER:

19 I am instructing him not to answer
20 because it's privileged.

21 MR. MICHAEL GERTLER:

22 We'll take it up with the Judge.

23 All right, sir. Thank you.

24 MR. SHAFFER:

25 Any other questions?

1 MR. MICHAEL GERTLER:

2 No, sir.

3 THE VIDEOGRAPHER:

4 We're off the record at 5:12. This
5 is the end of the deposition.

6 (Whereupon a discussion was held off
7 the record.)

8 RE-EXAMINATION BY MR. SHAFFER:

9 Q. Let me go back on the record with
10 respect to that last exchange.

11 Without waiving the attorney-client
12 privilege, Mr. Kohnhorst, did I ever suggest to
13 you any answer that you should give in any of
14 your testimony today?

15 MR. MICHAEL GERTLER:

16 I object to that. You either waive
17 it or you don't. You can't reserve it.
18 Once you open that door, you can't reserve
19 it.

20 MR. SHAFFER:

21 Well, we're not waiving it. I want
22 that clear.

23 MR. MICHAEL GERTLER:

24 You can't do that. I now instruct
25 you not to answer that question.

1 EXAMINATION BY MR. SHAFFER:

2 Q. Did I give you any answers?

3 MR. MICHAEL GERTLER:

4 Well, that opens the whole thing up
5 for both of us. It's not fair to do it
6 one way or the other.

7 MR. SHAFFER:

8 All right. Okay. Let's go on. I
9 will withdraw the question based on the
10 demand.

11 MR. MICHAEL GERTLER:

12 If you ask him, I'll ask him.

13 MR. SHAFFER:

14 Let me see if I've got everything.
15 Okay. Based on your instruction, we'll
16 conclude.

17 MR. MICHAEL GERTLER:

18 All right, sir.

19 (Whereupon the deposition was
20 concluded at 5:12 o'clock p.m.)

21 * * * * *

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24
25 WITNESS' CERTIFICATE

1
2
3 I have read or have had the foregoing
4 testimony read to me and hereby certify that it
5 is a true and correct transcription of my
6 testimony, with the exception of any attached
7 corrections or changes.
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in
HUMPHREY

EARL E. KOHNHORST

REPORTER'S CERTIFICATE

1
2
3 I, CHERYL FOURNET HUFFMAN,
4 Registered Merit Reporter, in and for the State
5 of Louisiana, as the officer before whom this
6 testimony was taken, do hereby certify that
7 EARL E. KOHNHORST, after having been duly sworn
8 by me upon authority of R.S. 37:2554, did
9 testify as hereinbefore set forth in the
10 foregoing 307 pages; that this testimony was
11 reported by me in the stenotype reporting
12 method, was prepared and transcribed by me or
13 under my personal direction and supervision,
14 and is a true and correct transcript to the
15 best of my ability and understanding; that I am
16 not related to counsel or to the parties
17 herein, nor am I otherwise interested in the
18 outcome of this matter.
19

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